

EXHIBIT 5

HRC Director
Ahni Malachi
Deposition
Transcript
Redacted,
Publicly-filed

(Unredacted
version has been
filed under seal)

Local 8027

vs

Frank Edelblut

Docket No. 1:21-cv-01077-PB

AHNI MALACHI

May 24, 2023



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<p style="text-align: center;">UNITED STATES DISTRICT COURT DISTRICT OF NEW HAMPSHIRE</p> <p style="text-align: center;">CERTIFIED ORIGINAL</p> <p>Local 8027, AFT-New Hampshire, et al.</p> <p style="text-align: center;">Plaintiff,</p> <p>v.</p> <p>Frank Edelblut, Commissioner, et al</p> <p style="text-align: center;">Defendants.</p> <p style="text-align: center;">No. 1:21-cv-01077-PB</p> <p style="text-align: center;">VOLUME I DEPOSITION OF AHNI MALACHI taken on behalf of the Plaintiffs at the New Hampshire Commission for Human Rights, Concord, NH, on May 24, 2023, at 11:15 a.m.</p> <p>Court Reporter: Cynthia Foster, LCR LCR #14 (RSA 310-A:161-181)</p>	<p style="text-align: right;">3</p> <p>1</p> <p>2</p> <p style="text-align: center;">INDEX</p> <p>3</p> <p style="text-align: center;">Deposition of Ahni Malachi</p> <p>4 Examination by Mr. Bissonnette: 5</p> <p>5</p> <p style="text-align: center;">EXHIBITS</p> <p>6 53 Letter, Malachi to DiLorenzo,</p> <p>7 March 4, 2022, DOE-10269-72 19</p> <p>8 54 Email, BurkeCohen to Malachi,</p> <p>9 20 Sep 2021, HRC-00379-380 49</p> <p>10 55 Exhibit 19, July 21, 2021,</p> <p>11 Guidance, PL 00415-423 77</p> <p>12 56 NH Commission for Human Rights,</p> <p>13 Minutes, October 7, 2021,</p> <p>14 HRC-00391-394 94</p> <p>15 57 Commissioner Edelblut's Objections</p> <p>16 and Responses to the Plaintiffs'</p> <p>17 First Set of Interrogatories 99</p> <p>18 58 Christian Kim and Ahni Malachi's</p> <p>19 Objections and Responses to the</p> <p>20 Plaintiffs' First Set of</p> <p>21 Interrogatories 101</p> <p>22 (Original exhibits retained by reporter)</p> <p>23 (Scanned copies provided to all counsel)</p>
<p style="text-align: right;">2</p> <p>1</p> <p>2 APPEARANCES:</p> <p>3 On behalf of the Plaintiffs, Local 8027, AFT-New</p> <p>4 Hampshire, AFL-CIO:</p> <p>5 STROOCK & STROOCK & LAVAN LLP</p> <p>6 By: Charles Moerdler, Esq.</p> <p>7 Elizabeth C. Milburn, Esq.</p> <p>8 David Kahne, Esq., by Zoom</p> <p>9 180 Maiden Lane</p> <p>10 New York, NY 10038</p> <p>11 212-806-5648</p> <p>12 cmoerdler@stroock.com</p> <p>13 ecmlburn@stroock.com</p> <p>14 On behalf of the Plaintiffs, Christina</p> <p>15 Philibotte, Andres Mejia, NEA-New Hampshire:</p> <p>16 ACLU OF NEW HAMPSHIRE</p> <p>17 By: Gilles Bissonnette, Esq.</p> <p>18 18 Low Avenue, Unit 12</p> <p>19 Concord, NH 03301</p> <p>20 603-225-3080</p> <p>21 gilles@aclu-nh.org</p> <p>22</p> <p>23 On behalf of the Defendants, Frank Edelblut,</p> <p>Ahni Malachi, John Formella, et al:</p> <p>NH DEPARTMENT OF JUSTICE</p> <p>By: Nathan W. Kenison-Marvin, Esq.</p> <p>33 Capitol Street</p> <p>Concord, NH 03301</p> <p>603-271-1292</p> <p>nathan.w.kenison-marvin@doj.nh.gov</p> <p>By Zoom:</p> <p>Peter Perroni, Esq.</p> <p>Nathan Fennessy, Esq., nfennessy@preti.com</p> <p>Morgan Nighan, Esq., mnighan@nixonpeabody.com</p> <p>Jennifer Eber, Esq.</p> <p>Kayla Turner, Esq., kaylat@drcnh.org.</p> <p>Esther Dickinson, Esq., edickinson@nhnea.org</p>	<p style="text-align: right;">4</p> <p>1</p> <p>2</p> <p style="text-align: center;">S T I P U L A T I O N S</p> <p>3</p> <p style="text-align: center;">It is agreed that the deposition shall</p> <p>4 be taken in the first instance in stenotype and when</p> <p>5 transcribed may be used for all purposes for which</p> <p>6 depositions are competent under New Hampshire</p> <p>7 practice.</p> <p>8</p> <p style="text-align: center;">Notice, filing, caption and all other</p> <p>9 formalities are waived. All objections except as to</p> <p>10 form are reserved and may be taken in court at trial.</p> <p>11</p> <p style="text-align: center;">It is further agreed that if the</p> <p>12 deposition is not signed within thirty (30) days</p> <p>13 after submission to counsel, the signature of the</p> <p>14 deponent is waived.</p> <p>15</p> <p style="text-align: center;">It is further agreed that exhibits may</p> <p>16 be retained by counsel until the time of trial.</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p>

<p>5</p> <p>1 AHNI MALACHI, DULY SWORN</p> <p>2 EXAMINATION</p> <p>3 BY MR. BISSONNETTE:</p> <p>4 Q Thank you, and I just want to make clear for the</p> <p>5 record that we have the same stipulations as</p> <p>6 yesterday. I think we're all in an agreement,</p> <p>7 and there's obviously going to be no recording</p> <p>8 of this deposition today. We're all in</p> <p>9 agreement there.</p> <p>10 MR. KENISON-MARVIN: I agree.</p> <p>11 Q Director Malachi, I know we've met before. My</p> <p>12 name is Gilles Bissonnette. I represent Tina</p> <p>13 Philibotte and Andres Mejia in this case. Thank</p> <p>14 you so much for coming in today. I'm just going</p> <p>15 to kind of walk you through kind of what the</p> <p>16 deposition process looks like, the common</p> <p>17 understandings and agreements that we have amid</p> <p>18 this process. So before I kind of go through</p> <p>19 that, I just want to ask you have you ever been</p> <p>20 deposed before?</p> <p>21 A No.</p> <p>22 Q Okay. So the way this works, obviously, is</p> <p>23 we're in a room, a reporter is going to be</p>	<p>7</p> <p>1 Okay?</p> <p>2 A Yes.</p> <p>3 Q And this is especially important. I know this</p> <p>4 isn't always, you know, a fun process going</p> <p>5 through a deposition, you can take breaks at any</p> <p>6 time. Typically, we do them on the hour. If</p> <p>7 you need them sooner, that's totally fine.</p> <p>8 Whatever makes you the most comfortable if you</p> <p>9 need a break. My only kind of caveat would be</p> <p>10 if there's a pending question that we just</p> <p>11 answer that question before we take that break.</p> <p>12 There's one exception to that. If there's</p> <p>13 a privilege assertion or a privilege question</p> <p>14 being raised either by you or by counsel, of</p> <p>15 course, I think then it would be appropriate to</p> <p>16 take a break even if we don't yet have an answer</p> <p>17 to that question. Okay?</p> <p>18 A Yes.</p> <p>19 (Discussion off the record re Zoom)</p> <p>20 Q If the Zoom component of this deposition becomes</p> <p>21 a distraction visually, I can move myself so</p> <p>22 it's less in sight so that is an option I just</p> <p>23 want to make you aware of as well.</p>
<p>6</p> <p>1 recording everything that we say to one another.</p> <p>2 So I think it's important that we don't talk</p> <p>3 over each other. That's more an issue for the</p> <p>4 lawyers as opposed to the witnesses so I can</p> <p>5 promise you I will do my best to let you finish</p> <p>6 your answers before I ask another question, and</p> <p>7 reciprocally, I would just ask that you wait to</p> <p>8 provide an answer until I finish my question.</p> <p>9 Does that make sense?</p> <p>10 A Yes.</p> <p>11 Q And if you don't understand a question, please</p> <p>12 tell me, and I'll be happy to rephrase or make</p> <p>13 an effort to reclarify. If you don't do that</p> <p>14 and you respond to the question, I'm going to</p> <p>15 assume that you have understood the question.</p> <p>16 Okay?</p> <p>17 A Okay.</p> <p>18 Q And as well, I would just ask you given the fact</p> <p>19 that we have a court reporter here transcribing</p> <p>20 the deposition that I'd ask that you just avoid</p> <p>21 nonverbal cues so just make sure your responses</p> <p>22 are verbal and are loud enough to be heard by</p> <p>23 both the folks in this room and the reporter.</p>	<p>8</p> <p>1 Obviously, you were just sworn in. You do</p> <p>2 know that you're under oath, correct?</p> <p>3 A Yes.</p> <p>4 Q Okay. And I'm going to just kind of represent</p> <p>5 to you that there is a chance in this case that</p> <p>6 the deposition today, either in whole or in</p> <p>7 part, would be made available to the judge in</p> <p>8 this case. Is that something that you're aware</p> <p>9 of?</p> <p>10 A Yes.</p> <p>11 Q Will anything prevent you from giving truthful</p> <p>12 and accurate testimony today?</p> <p>13 A I don't understand the question.</p> <p>14 Q Is there anything that would prevent you from</p> <p>15 giving truthful testimony today at this</p> <p>16 deposition? Medications, family issues, is</p> <p>17 there anything kind of in your life that would</p> <p>18 prevent you from giving truthful testimony.</p> <p>19 A No.</p> <p>20 Q Okay. I assume that you know that this is a</p> <p>21 lawsuit that challenges portions of what the</p> <p>22 Plaintiffs have called the Banned Concepts Act.</p> <p>23 Do you understand that's what's being litigated</p>

<p style="text-align: right;">9</p> <p>1 in this case?</p> <p>2 A I would push back against the title of that.</p> <p>3 Q Please do. Yes. How so?</p> <p>4 A So if you are talking about RSA 354-A:29 through</p> <p>5 34, is that what you're asking me?</p> <p>6 Q That is. Do you understand that those are the</p> <p>7 provisions of New Hampshire law that are being</p> <p>8 challenged in this case?</p> <p>9 A Yes.</p> <p>10 Q If I were to call those provisions that are</p> <p>11 being challenged "HB 2," and I wouldn't be</p> <p>12 referencing the entire bill of HB 2, but if I</p> <p>13 were to use the term "HB 2" to reference those</p> <p>14 provisions 354-A:29 to 34, do we have a common</p> <p>15 understanding on just the title of the</p> <p>16 challenged law?</p> <p>17 A The preference would be the freedom from</p> <p>18 discrimination in public workplaces and</p> <p>19 education because that's the name of the amended</p> <p>20 section.</p> <p>21 Q Would you prefer that I call it the Freedom from</p> <p>22 Discrimination Law? I just want to make sure we</p> <p>23 have a common understanding on terminology.</p>	<p style="text-align: right;">11</p> <p>1 that we are calling the Freedom from</p> <p>2 Discrimination Law in this deposition.</p> <p>3 A PL 004 through?</p> <p>4 Q 004 to 007.</p> <p>5 A Okay. So to answer your question, there's a bit</p> <p>6 of a discrepancy. So are you asking me if pages</p> <p>7 4 through 7 are relative to 354-A and the</p> <p>8 section entitled Right to Freedom from</p> <p>9 Discrimination in Public Workplaces in Education</p> <p>10 or is there an additional question that you're</p> <p>11 asking?</p> <p>12 Q Sure. I guess my opening question is is it your</p> <p>13 understanding that the unredacted language on</p> <p>14 pages 4 and 7 of Exhibit 1 contain the statutory</p> <p>15 language that's being challenged by the</p> <p>16 Plaintiffs in this case?</p> <p>17 A So my specific answer would be in part, yes.</p> <p>18 There are other statutes that are listed there.</p> <p>19 Q Okay. When I use the phrase in this case, the</p> <p>20 "Freedom from Discrimination Law" which is the</p> <p>21 common terminology we discussed, the law being</p> <p>22 challenged in this case, is it your</p> <p>23 understanding that we're referring to the</p>
<p style="text-align: right;">10</p> <p>1 That's all. Would that be your preference?</p> <p>2 A I can agree to that portion of the exact title.</p> <p>3 Yes.</p> <p>4 Q Okay. So if I were to use the term the Freedom</p> <p>5 from Discrimination Law in the course of this</p> <p>6 deposition, you would understand that what I'm</p> <p>7 referring to are the provisions in New Hampshire</p> <p>8 law RSA 354-A:29 to 34.</p> <p>9 A Yes.</p> <p>10 Q Okay. I'm just going to just so again we have a</p> <p>11 common understanding on terminology, I'm just</p> <p>12 going to put before you what's been previously</p> <p>13 marked as Exhibit 1, and I am going to ask you</p> <p>14 to just review this, Director Malachi, briefly,</p> <p>15 but I do want to represent to you that that</p> <p>16 first page is a page created by me as Exhibit 1</p> <p>17 to the lawsuit that Majia/Philibotte Plaintiffs</p> <p>18 filed in this case.</p> <p>19 So setting that cover page aside, I would</p> <p>20 just ask you to review pages marked PL 004 to PL</p> <p>21 007 and my question is going to be when you're</p> <p>22 done reviewing that is this the law that you</p> <p>23 understand to be challenged in this case and</p>	<p style="text-align: right;">12</p> <p>1 language on pages 4 through 7 on Exhibit 1?</p> <p>2 A As it relates to 354-A, subsections 29 through</p> <p>3 34?</p> <p>4 Q Okay.</p> <p>5 A Yes.</p> <p>6 Q And I'm going to just direct your attention to</p> <p>7 just page 6 which deals with RSA 193:40. Do you</p> <p>8 see that language?</p> <p>9 A 193:40. I see that.</p> <p>10 Q Yes. I would just, I don't know if you know</p> <p>11 this, but I will just represent to you again so</p> <p>12 we have a common understanding that that portion</p> <p>13 which is not in 354-A is also being challenged</p> <p>14 by the Plaintiffs. So is that something that</p> <p>15 you knew before today?</p> <p>16 A I have knowledge about 354-A and subsections</p> <p>17 dealing with :29 through :34.</p> <p>18 Q Do you have any knowledge with respect to</p> <p>19 193:40?</p> <p>20 A That's not the statute that I work with.</p> <p>21 Q Okay. We'll get to that. That's good to know</p> <p>22 though. Thank you.</p> <p>23 Director Malachi, what's your current</p>

<p style="text-align: right;">13</p> <p>1 position?</p> <p>2 A I'm Executive Director of the New Hampshire</p> <p>3 Commission on Human Rights.</p> <p>4 Q How long have you been in that role?</p> <p>5 A Five years. Little over.</p> <p>6 Q What are your duties in that role?</p> <p>7 A They're a variety of duties. I could certainly,</p> <p>8 maybe faster to give you my job description in</p> <p>9 writing.</p> <p>10 Q Well, I think maybe just give me a summary of</p> <p>11 how you would describe those duties.</p> <p>12 A I'm in charge of the New Hampshire Commission</p> <p>13 for Human Rights. The staff, media liaison,</p> <p>14 legislative liaison, budgeting, liaison to the</p> <p>15 Governor's office, other duties as assigned.</p> <p>16 Q When you say "other duties as assigned," who</p> <p>17 would be doing the assigning?</p> <p>18 A It could be the legislature could, the Governor</p> <p>19 could, the Commissioners could.</p> <p>20 Q When you say "Commissioners," who are you</p> <p>21 referring to?</p> <p>22 A The Commissioners of the Commission.</p> <p>23 Q For Human Rights?</p>	<p style="text-align: right;">15</p> <p>1 every month. What are the general topics of</p> <p>2 agenda items that are covered by the Commission</p> <p>3 when they meet monthly?</p> <p>4 A Those are the topics, the ones I just mentioned,</p> <p>5 those are the topics that we cover.</p> <p>6 Q Okay. Is the actual Commission involved in the</p> <p>7 processing and handling of complaints that come</p> <p>8 into the office or is that outside their</p> <p>9 responsibilities?</p> <p>10 A Are you asking me if the Commission or the</p> <p>11 Commissioners?</p> <p>12 Q What would be the difference?</p> <p>13 A The Commission would be staff in this office.</p> <p>14 The Commissioners would be the individuals.</p> <p>15 Q Thank you. I appreciate that.</p> <p>16 A So I wasn't clear.</p> <p>17 Q I appreciate that. Are the Commissioners</p> <p>18 involved in processing complaints that come into</p> <p>19 the office?</p> <p>20 A If I understand your question, are you asking me</p> <p>21 if they have any involvement in charges that</p> <p>22 come in?</p> <p>23 Q Yes.</p>
<p style="text-align: right;">14</p> <p>1 A Yes.</p> <p>2 Q How many are there?</p> <p>3 A There are 7.</p> <p>4 Q How would you describe how your role interacts</p> <p>5 with the role of the Commissioners within the</p> <p>6 Commission of Human Rights?</p> <p>7 A Could you be more specific?</p> <p>8 Q Within the structure of the Commission for Human</p> <p>9 Rights Commission, do you report to</p> <p>10 Commissioners, do they supervise you, how would</p> <p>11 you describe that relationship?</p> <p>12 A I communicate with all of the Commissioners, but</p> <p>13 primarily the Chair of the Commission, and it</p> <p>14 could be day to day, it could be -- we have a</p> <p>15 meeting every month. The Commission meets</p> <p>16 monthly.</p> <p>17 Q Okay. And outside the meetings that occur, what</p> <p>18 are the general topics of conversation that you</p> <p>19 have with the Chair of the Commission?</p> <p>20 A We talk about the status of affairs with the</p> <p>21 Commission. So caseload, legislation, budgets,</p> <p>22 other topics.</p> <p>23 Q I know that you said that the Commission meets</p>	<p style="text-align: right;">16</p> <p>1 A Okay. They do.</p> <p>2 Q Could you describe that involvement generally?</p> <p>3 MR. KENISON-MARVIN: Objection.</p> <p>4 Foundation. You can answer.</p> <p>5 A The Commissioners upon completion of an</p> <p>6 investigation, there's an Investigating</p> <p>7 Commissioner that's assigned to a charge who</p> <p>8 would then make a finding of probable cause or</p> <p>9 no probable cause.</p> <p>10 Q So I just want to be clear. We'll get into kind</p> <p>11 of what that process looks like in just a few</p> <p>12 minutes, but I just want to make sure I</p> <p>13 understand the Investigating Commissioner is a</p> <p>14 Commissioner on the Commission for Human Rights;</p> <p>15 is that fair to say?</p> <p>16 A Yes.</p> <p>17 Q Okay. I kind of zoomed a little bit too far</p> <p>18 forward. I did want to get to your tenure, your</p> <p>19 work history before you took this job with the</p> <p>20 HRC five years ago. So what was your place of</p> <p>21 employment before you took this position at the</p> <p>22 Human Rights Commission?</p> <p>23 A Hearst, Inc.</p>

<p style="text-align: right;">17</p> <p>1 Q What was your role at Hearst, Inc.?</p> <p>2 A So specifically I worked for WMUR, and I was</p> <p>3 the, what it's called, Public Service Manager.</p> <p>4 Q And could you give me the approximate duration</p> <p>5 of that employment using years? You don't have</p> <p>6 to give me months.</p> <p>7 A Approximately six years.</p> <p>8 Q Could you give me the years, that six-year</p> <p>9 range? Was that 2000 when to when?</p> <p>10 A I believe it was 2012 to 2018.</p> <p>11 Q Okay. Is 2018 when you assumed this role at the</p> <p>12 Human Rights Commission?</p> <p>13 A Yes.</p> <p>14 Q What were your responsibilities in that role at</p> <p>15 Hearst, Inc.?</p> <p>16 A Producing Public Service Announcements for</p> <p>17 charities, and other nonprofits. Responsibility</p> <p>18 for public-facing events where the TV station</p> <p>19 was involved and other duties.</p> <p>20 Q I'm now going to kind of go back into our</p> <p>21 discussion with complaints.</p> <p>22 Could you just describe how the Human</p> <p>23 Rights Commission processes complaints?</p>	<p style="text-align: right;">19</p> <p>1 A Yes.</p> <p>2 Q Can you describe for me what that process looks</p> <p>3 like?</p> <p>4 A Someone who believes they've been discriminated</p> <p>5 against will make a call, and if the context of</p> <p>6 what they're alleging meets prima facie then a</p> <p>7 charge is docketed, the other party is noticed,</p> <p>8 and then there would be an investigation of the</p> <p>9 charge.</p> <p>10 Q Okay. I'm going to mark Exhibit 53.</p> <p>11 (Exhibit 53 marked for identification)</p> <p>12 Q I put before you a document that's marked as</p> <p>13 Exhibit 53. Do you have Exhibit 53 in front of</p> <p>14 you?</p> <p>15 A It looks like that's what it says here.</p> <p>16 Q Okay. So I would just ask you to just review</p> <p>17 Exhibit 53. I'm just going to have some</p> <p>18 questions about it so let me know when you're</p> <p>19 finished reviewing it.</p> <p>20 Have you reviewed Exhibit 53?</p> <p>21 A I have looked at it, yes.</p> <p>22 Q Great. Thank you. Have you seen Exhibit 53</p> <p>23 before?</p>
<p style="text-align: right;">18</p> <p>1 MR. KENISON-MARVIN: Objection. Foundation</p> <p>2 and vague.</p> <p>3 Q Let me ask this. Does the Human Rights</p> <p>4 Commission process complaints made by members of</p> <p>5 the public under the law against discrimination?</p> <p>6 MR. KENISON-MARVIN: Objection. Vague.</p> <p>7 A Is there something more specific that you can</p> <p>8 offer --</p> <p>9 Q I'm afraid not.</p> <p>10 A -- to allow me to answer?</p> <p>11 Q My question is pretty direct. Yes or no, does</p> <p>12 the New Hampshire Commission for Human Rights</p> <p>13 process complaints made by the public under the</p> <p>14 law against discrimination?</p> <p>15 MR. KENISON-MARVIN: Freedom from</p> <p>16 Discrimination Law?</p> <p>17 Q I'm actually just talking about 354-A here</p> <p>18 generally. So I could, maybe I'll clarify my</p> <p>19 question. I'm not getting into HB 2 right now,</p> <p>20 and we will get there, but just generally with</p> <p>21 respect to 354-A, does the Human Rights</p> <p>22 Commission process complaints made by the public</p> <p>23 under RSA Chapter 354-A?</p>	<p style="text-align: right;">20</p> <p>1 A Exhibit 53?</p> <p>2 Q Yes.</p> <p>3 A No.</p> <p>4 Q Exhibit 53 at least to me looks like a letter</p> <p>5 from you dated March 4th, 2022, to</p> <p>6 Representative DiLorenzo. Have I accurately</p> <p>7 described Exhibit 53?</p> <p>8 A As it appears here, yes, but I'm not sure unless</p> <p>9 I compare it to something that I wrote to know</p> <p>10 if this is exactly the same thing.</p> <p>11 Q Well, I can submit to you that this is a</p> <p>12 document that it seems that you copied to</p> <p>13 Commissioner Frank Edelblut and that was</p> <p>14 produced to us by the Department of Education.</p> <p>15 Any reason to think this is not an accurate</p> <p>16 reflection of a letter that you wrote on March</p> <p>17 4th to Representative DiLorenzo?</p> <p>18 A Based on what this looks like here? Yes.</p> <p>19 However, if I'm not comparing it to the signed</p> <p>20 copy that I have, then I'm assuming that this is</p> <p>21 the same thing.</p> <p>22 Q Okay.</p> <p>23 A But without comparing it, I can't say that it</p>

<p>21</p> <p>1 is.</p> <p>2 Q I'm just going to refer you to the last page of</p> <p>3 the document, page 10272. Does that look like</p> <p>4 your signature?</p> <p>5 A Yes, it does.</p> <p>6 Q So I just want to make sure that we have a</p> <p>7 common understanding. Any reason for you to</p> <p>8 believe sitting here today without you having</p> <p>9 cross-referenced this with a copy of your files</p> <p>10 that this is not a true and accurate copy of a</p> <p>11 letter that you wrote on March 4th, 2022, to</p> <p>12 Representative DiLorenzo?</p> <p>13 A As I sit here today, it looks like it.</p> <p>14 Q Okay.</p> <p>15 A Without having the opportunity to</p> <p>16 cross-reference.</p> <p>17 Q Okay. I'm just going to direct your attention</p> <p>18 on page 2 of this document, Bates stamped 10270,</p> <p>19 the language that states, that begins with "To</p> <p>20 fully answer your question," and goes on to the</p> <p>21 next page and ends in paragraph (d) ending with</p> <p>22 the language "to appeal in a public forum, New</p> <p>23 Hampshire Superior Court."</p>	<p>23</p> <p>1 Q Is it an accurate reflection at the time it was</p> <p>2 written on March 4th, 2022, of how the complaint</p> <p>3 process works within the Human Rights</p> <p>4 Commission?</p> <p>5 A As I sit here today reading this, it does appear</p> <p>6 to be an accurate reflection of the</p> <p>7 Commissioner's process.</p> <p>8 Q Sitting here today on May 24th, 2023, is this</p> <p>9 still an accurate reflection of how the</p> <p>10 complaint process works within the Human Rights</p> <p>11 Commission?</p> <p>12 A Yes.</p> <p>13 Q Okay. You mentioned earlier in your testimony</p> <p>14 that a complaint could come in through a call.</p> <p>15 I guess my question for you is what are the ways</p> <p>16 in which complaints come into the office?</p> <p>17 A Can you clarify by what you mean regarding a</p> <p>18 complaint?</p> <p>19 Q Well, you use the term on Exhibit 53, bottom of</p> <p>20 page 10270, use the phrase "understanding of the</p> <p>21 complaint process." So what did you mean there</p> <p>22 when you said "complaint process"?</p> <p>23 A So the Commission, regarding the word complaint,</p>
<p>22</p> <p>1 Do you see the language that I just</p> <p>2 referred to you in Exhibit 53?</p> <p>3 A So where specifically are you on page 2? So I</p> <p>4 make sure I'm in the same place with you.</p> <p>5 Q Subsection 5(a) begins with "to fully answer</p> <p>6 your question." Do you see that language?</p> <p>7 A I do.</p> <p>8 Q And now the box of text that I'm just wanting to</p> <p>9 direct your attention to would end in subsection</p> <p>10 (d) on the next page which begins with "both</p> <p>11 parties are afforded." Do you see that?</p> <p>12 A I do.</p> <p>13 Q My question is just is that an accurate</p> <p>14 reflection of how the complaint process works</p> <p>15 within the Human Rights Commission?</p> <p>16 A I will need to read this section.</p> <p>17 Q Please do.</p> <p>18 A Okay.</p> <p>19 Q Director Malachi, have you reviewed the language</p> <p>20 that we just referenced moments ago, subsections</p> <p>21 (a) through (d) on pages 10270 to 10271 on</p> <p>22 Exhibit 53?</p> <p>23 A I did.</p>	<p>24</p> <p>1 complaint for the Commission means a docketed</p> <p>2 charge. So is that the question that you're</p> <p>3 asking?</p> <p>4 Q Well, my question just was just what did you</p> <p>5 mean when you said complaint process? So I want</p> <p>6 to make sure I understand that your definition</p> <p>7 of complaint as it was used on the bottom of</p> <p>8 10270 is a docketed complaint; is that what</p> <p>9 you're saying?</p> <p>10 A Correct.</p> <p>11 Q So what I'm going to, my question here is going</p> <p>12 to be a little bit different, but I appreciate</p> <p>13 that definition you provided.</p> <p>14 What are the forms in which predocketed</p> <p>15 complaints come into your office?</p> <p>16 A So a complaint is only something that's</p> <p>17 docketed. So that's why I'm asking for clarity.</p> <p>18 Q What if I just used the phrase "allegations of</p> <p>19 discrimination," would that be an easier phrase</p> <p>20 to use?</p> <p>21 A Are you using allegation as something that's not</p> <p>22 docketed versus a complaint that is?</p> <p>23 Q I am in part because that's the language that's</p>

<p style="text-align: right;">25</p> <p>1 used at the bottom of 10270 where you state</p> <p>2 investigate and pass upon allegations of</p> <p>3 discrimination.</p> <p>4 So I think my question to you is going to</p> <p>5 be what are the forms in which allegations of</p> <p>6 discrimination are made that come to your</p> <p>7 office?</p> <p>8 A A person who believes they've been discriminated</p> <p>9 against can make a phone call and talk to us</p> <p>10 about it. They can email us. They could drop</p> <p>11 something off.</p> <p>12 Q Okay. The language at the bottom of 10270 says</p> <p>13 that an assessment is made to ensure the</p> <p>14 complainant has a prima facie case. Do you see</p> <p>15 that language?</p> <p>16 A Yes.</p> <p>17 Q And then the second sentence, the next page or</p> <p>18 additional sentence on the next page says, "If</p> <p>19 this is the determination, the allegation of</p> <p>20 discrimination is verified," there's some</p> <p>21 bracketed language, then "submitted to the</p> <p>22 Commission, and becomes a docketed charge of</p> <p>23 discrimination whereby both parties are notified</p>	<p style="text-align: right;">27</p> <p>1 we've talked about allegations, we've talked</p> <p>2 about complaints. So --</p> <p>3 Q Gotcha.</p> <p>4 A The Commission language has bearing. So in</p> <p>5 order to answer the question I need clarity on</p> <p>6 what you're asking.</p> <p>7 Q Yes. I see the confusion now. So my question</p> <p>8 is going to be for an allegation of</p> <p>9 discrimination to be docketed, does the Human</p> <p>10 Rights Commission have criteria -- strike that.</p> <p>11 For an allegation of discrimination to be</p> <p>12 docketed, does the Commission have requirements</p> <p>13 as to the form in which the allegation is</p> <p>14 submitted to the Commission?</p> <p>15 A Are you ultimately asking about people</p> <p>16 communicating with us or a docketed charge?</p> <p>17 Q Why don't you read the question back just so</p> <p>18 we're all rowing in the same direction.</p> <p>19 (Requested portion read back by court reporter)</p> <p>20 Q So that question is I'm referring to predocketed</p> <p>21 allegations, and all I'm trying to get at is</p> <p>22 there a requirement for them to be in writing,</p> <p>23 can they be oral, that's what I'm getting at.</p>
<p style="text-align: right;">26</p> <p>1 in writing." Do you see that language?</p> <p>2 A Yes.</p> <p>3 Q Is there a form a complaint needs to be</p> <p>4 submitted in for it to be docketed?</p> <p>5 MR. KENISON-MARVIN: Objection. Vague.</p> <p>6 Mischaracterizes prior testimony.</p> <p>7 Q Let me ask the question more directly. Can a</p> <p>8 complaint be documented if it's oral?</p> <p>9 MR. KENISON-MARVIN: Same objections.</p> <p>10 A I'm unclear as to the question.</p> <p>11 Q I'm afraid I don't really know how to ask it</p> <p>12 more directly. Are there criteria -- let me ask</p> <p>13 it this way. Are there criteria for how a</p> <p>14 complaint must be submitted for it to be</p> <p>15 docketed?</p> <p>16 MR. KENISON-MARVIN: Same objections.</p> <p>17 A Could you ask the question again, please?</p> <p>18 Q Could you read it back, please?</p> <p>19 (Requested portion read back by court reporter)</p> <p>20 MR. KENISON-MARVIN: Same objections.</p> <p>21 A That question is confusing.</p> <p>22 Q Why is it confusing?</p> <p>23 A So I'm unclear if you're asking about, because</p>	<p style="text-align: right;">28</p> <p>1 That's a compound question, and I'm only</p> <p>2 providing that for context. I'm going to reask</p> <p>3 the question again.</p> <p>4 For an allegation of discrimination to be</p> <p>5 docketed, does the Commission have requirements</p> <p>6 as to the form in which the allegations are</p> <p>7 submitted to the Commission?</p> <p>8 A To answer your question, in reading 5(a), it</p> <p>9 clearly states that it must be verified and</p> <p>10 verification is a notary seal.</p> <p>11 Q Okay. Can you refer that page to me?</p> <p>12 A It is -- so if you're looking at the document,</p> <p>13 the number 5 starts on page 2, and then (a) is</p> <p>14 on page 2, and towards the end of (a) which is</p> <p>15 now on page 3 at the very top.</p> <p>16 Q Thank you. So just so I'm clear, for an</p> <p>17 allegation of discrimination to be docketed, is</p> <p>18 it your testimony that it would need to be in a</p> <p>19 writing, signed by the complainant, and</p> <p>20 witnessed by a notary and submitted to the</p> <p>21 Commission; is that correct?</p> <p>22 A That is correct.</p> <p>23 Q Okay. For an allegation of discrimination to be</p>

<p style="text-align: right;">29</p> <p>1 docketed, does the complainant have to use a</p> <p>2 form provided by the Human Rights Commission or</p> <p>3 can they use any other form of writing that is</p> <p>4 verified and signed by the Complainant and</p> <p>5 witnessed by a notary?</p> <p>6 A The complainant would need to use a form by the</p> <p>7 Commission.</p> <p>8 Q Okay. Did anyone assist you in writing the</p> <p>9 letter marked as Exhibit 53?</p> <p>10 A There's always legal review.</p> <p>11 Q Fair. Do you recall there being legal review</p> <p>12 with respect to Exhibit 53?</p> <p>13 A As I sit here today, I'm unsure.</p> <p>14 Q Okay. I know you haven't been deposed before.</p> <p>15 I want to say that depositions are not a memory</p> <p>16 test. So if you can't remember, it's fine and</p> <p>17 understandable especially if we're talking about</p> <p>18 events years ago. So I understand.</p> <p>19 With respect to the language on page 2 and</p> <p>20 beginning on page 3, Bates stamped 10270, "an</p> <p>21 assessment is made to ensure that the</p> <p>22 complainant has a prima facie case, i.e., "at</p> <p>23 first sight" the claim meets the legal standard</p>	<p style="text-align: right;">31</p> <p>1 A Sean Locke.</p> <p>2 Q The intake coordinator. Do you have one intake</p> <p>3 coordinator or multiple intake coordinators?</p> <p>4 A Usually there is one, but if they're not in, it</p> <p>5 could be someone else.</p> <p>6 Q Who would that other person would be if that</p> <p>7 intake coordinator is not in?</p> <p>8 A It varies. It could be the Assistant Director.</p> <p>9 Could be an investigator.</p> <p>10 Q Who is the Assistant Director currently?</p> <p>11 A Sarah Burke Cohen.</p> <p>12 Q And you just mentioned the investigator moments</p> <p>13 ago. Does the Commission have one investigator,</p> <p>14 multiple investigators?</p> <p>15 A Multiple.</p> <p>16 Q How many?</p> <p>17 A Five.</p> <p>18 Q How does an intake coordinator decide when to</p> <p>19 consult with the Assistant Director about</p> <p>20 whether to docket an allegation of</p> <p>21 discrimination?</p> <p>22 MR. KENISON-MARVIN: Objection.</p> <p>23 Foundation. Vague. Asks for speculation. You</p>
<p style="text-align: right;">30</p> <p>1 to file a charge with the Commission." Do you</p> <p>2 see that language?</p> <p>3 A Yes.</p> <p>4 Q Who makes that decision within the Commission as</p> <p>5 to whether a prima facie case has been made?</p> <p>6 A Staff and/or legal assistance.</p> <p>7 Q Who would be just the names of the staff and/or</p> <p>8 legal assistants that would be involved in that</p> <p>9 decision?</p> <p>10 A The actual name or the position name?</p> <p>11 Q You know, actually, let's do positions. That's</p> <p>12 probably easier. Thank you for the</p> <p>13 clarification.</p> <p>14 A So the intake coordinator is the first step with</p> <p>15 the Commission, and that would be in</p> <p>16 consultation with the Assistant Director. And</p> <p>17 if there was additional consultation needed,</p> <p>18 then we would speak with our client services</p> <p>19 representative in the Department of Justice.</p> <p>20 Civil Bureau, Department of Justice.</p> <p>21 Q Okay. Is the client services representative at</p> <p>22 the Department of Justice right now, who would</p> <p>23 that be?</p>	<p style="text-align: right;">32</p> <p>1 can answer.</p> <p>2 Q You can answer it if you can.</p> <p>3 A The Assistant Director is the supervisor of the</p> <p>4 intake coordinator.</p> <p>5 Q Does the intake, what I'm just trying to get at</p> <p>6 is how these decisions are made. That's it. So</p> <p>7 I guess what I'm trying to figure out is are</p> <p>8 there standards that exist with respect to when</p> <p>9 the intake coordinator consults with the</p> <p>10 Assistant Director making this decision? Are</p> <p>11 there policies in place concerning when that</p> <p>12 consultation occurs?</p> <p>13 MR. KENISON-MARVIN: Objection. Compound.</p> <p>14 You can answer.</p> <p>15 A Broadly speaking. There are for all of the</p> <p>16 areas of jurisdiction that the Commission has</p> <p>17 there are legal standards.</p> <p>18 Q Um-hum.</p> <p>19 A So the prima facie is based on the legal</p> <p>20 standard.</p> <p>21 Q Do you know how frequently the intake</p> <p>22 coordinator consults with the Assistant Director</p> <p>23 with respect to decisions as to when to docket</p>

<p>33</p> <p>1 an allegation of discrimination that's been</p> <p>2 made?</p> <p>3 A I do not.</p> <p>4 Q Are there periodic meetings that occur within</p> <p>5 the intake coordinator and the Assistant</p> <p>6 Director with respect to whether to docket</p> <p>7 allegations of discrimination?</p> <p>8 A I believe they meet weekly, but I'm unsure.</p> <p>9 Q Okay. Are those meetings that you're present</p> <p>10 for?</p> <p>11 A I am not.</p> <p>12 Q Who is present at those meetings in which</p> <p>13 decisions are made as to whether or not to</p> <p>14 docket an allegation of discrimination?</p> <p>15 MR. KENISON-MARVIN: Objection.</p> <p>16 Foundation. You can answer.</p> <p>17 A I would want to clarify something.</p> <p>18 Q Please do. Of course.</p> <p>19 A Those are weekly meetings that take place,</p> <p>20 generally speaking.</p> <p>21 Q Okay.</p> <p>22 A It's not always whether to docket or not to</p> <p>23 docket.</p>	<p>35</p> <p>1 consultation with the Assistant Director. Does</p> <p>2 the Assistant Director ever bring you in to the</p> <p>3 decision as to whether or not to docket an</p> <p>4 allegation of discrimination?</p> <p>5 A Could you ask that again?</p> <p>6 Q Could you read that back, please?</p> <p>7 (Requested portion read back by court reporter)</p> <p>8 A To answer the first part of your question, the</p> <p>9 intake coordinator is not always meeting with</p> <p>10 the Assistant Director to make a determination</p> <p>11 of whether or not to docket a charge.</p> <p>12 Q Is it fair to say that sometimes the intake</p> <p>13 coordinator is making that decision without</p> <p>14 consulting the Assistant Director, right?</p> <p>15 A It would be fair to say that the intake</p> <p>16 coordinator may not need the assistance of the</p> <p>17 Assistant Director to make that determination.</p> <p>18 Q Have you ever been consulted by members of your</p> <p>19 staff about a decision whether or not to docket</p> <p>20 an allegation of discrimination?</p> <p>21 A I'm unsure how to answer that question.</p> <p>22 Q What about the question kind of gives you pause?</p> <p>23 A It's very broad. Could you ask it again?</p>
<p>34</p> <p>1 Q Gotcha.</p> <p>2 A The initial step in docketing is the legal</p> <p>3 standard.</p> <p>4 Q I'm just trying to get at how that decision is</p> <p>5 made. That's all. So in these weekly meetings</p> <p>6 is it fair to say that there are agenda items</p> <p>7 that exist independent of decisions whether to</p> <p>8 docket allegations of discrimination?</p> <p>9 A I would be making an assumption because I don't</p> <p>10 attend those meetings.</p> <p>11 Q Without guessing, what's your knowledge of</p> <p>12 what's discussed during those weekly meetings,</p> <p>13 the generally topics of discussion?</p> <p>14 A Generally speaking, I think it would depend. If</p> <p>15 the intake coordinator is a new person, then</p> <p>16 you're still in the process of training and</p> <p>17 looking at the legal standard to make sure</p> <p>18 there's understanding.</p> <p>19 If they're someone that's more seasoned,</p> <p>20 then there could be potentially a clarification</p> <p>21 on something. It could be any number of things.</p> <p>22 Q Okay. Now, I know that this docketing decision</p> <p>23 is done by the intake coordinator in</p>	<p>36</p> <p>1 Q I'm happy to ask the court reporter to state the</p> <p>2 question again.</p> <p>3 (Requested portion read back by court reporter)</p> <p>4 A So that's a very broad question. The best</p> <p>5 answer that I could give you sitting here today</p> <p>6 would be if there were a question, we would</p> <p>7 speak with an attorney if there was an issue</p> <p>8 that could not be resolved.</p> <p>9 Q Has a member of your staff ever asked for your</p> <p>10 feedback as to whether or not the Commission</p> <p>11 should docket an allegation of discrimination?</p> <p>12 A Maybe.</p> <p>13 Q Do you recall any instances sitting here today</p> <p>14 where that may have occurred?</p> <p>15 A Sitting here today, I can't give you a</p> <p>16 definitive answer.</p> <p>17 Q Okay. So you don't recall sitting here today a</p> <p>18 specific example in the context of a specific</p> <p>19 allegation where you were asked to provide</p> <p>20 feedback as to whether or not that allegation</p> <p>21 should be docketed, correct?</p> <p>22 A That is correct.</p> <p>23 Q I just want to go back again to the kind of the</p>

<p style="text-align: right;">37</p> <p>1 format of these allegations of discrimination. 2 Besides being in writing, verified, signed by 3 the complainant and witnessed by a notary, are 4 there any other requirements for allegations of 5 discrimination to become docketed complaints? 6 A I'm sorry. Are there other requirements? 7 Q Yes. Beyond meeting the prima fascia legal 8 standard, are there any other format 9 requirements that exist within the Commission 10 for those allegations to become docketed? 11 A Can you just go over your list again to make 12 sure that I'm -- 13 Q Absolutely. In writing, verified, signed by the 14 complainant, and witnessed by the notary. 15 MR. KENISON-MARVIN: Let me just object to 16 the extent it calls for a legal contention, but 17 you can answer. 18 A I'm unaware of any other bases. It must be 19 verified which means it's on paper, and it has 20 to have a signature which the notary is 21 verifying. 22 Q Just referring to the last line of paragraph (a) 23 that is on page 271, there's language that</p>	<p style="text-align: right;">39</p> <p>1 A No. It's confidential. 2 Q Referring to now subsection (b), "The complaint 3 is investigated, and a determination is made by 4 the Investigating Commission whether the charge 5 has a Probable Cause (PC) or No Probable Cause 6 (NPC) finding." Do you see that language I just 7 referenced? 8 A Yes. 9 Q How are docketed complaints investigated? 10 What's that process? 11 A The investigation process is the investigator 12 reviews any documentation that has already been 13 submitted by either parties and/or requests 14 additional documentation from the parties. Has 15 interviews with the parties. 16 Q Is the investigator here a member of the 17 Commission? 18 A I'm unclear about the question. 19 Q I believe in earlier testimony we talked about 20 Commission investigators. Do I have that 21 recollection correct? 22 Let me ask this. Who is doing the 23 investigating with respect to "the complaint is</p>
<p style="text-align: right;">38</p> <p>1 states whereby both parties are notified in 2 writing. Do you see that? 3 A Yes. 4 Q So I just want to make sure I understand the 5 process. Once an allegation of discrimination 6 becomes a docketed complaint, a notice is 7 submitted to the complaining party and the 8 individual alleged to have violated the law; is 9 that correct? 10 A Yes. 11 Q What does that writing look like actually? What 12 is the format in which that notice is provided? 13 Why don't I ask one good question instead 14 of two compound questions. So what is the 15 format in which that notice is provided to the 16 complaining party and the individual alleged to 17 have engaged in discrimination? 18 A The parties receive a cover letter from the 19 Commission. Enclosed with that is a copy of the 20 charge made by the Complainant. 21 Q Is that docketed complaint once it is docketed, 22 is it something that becomes a public record at 23 all?</p>	<p style="text-align: right;">40</p> <p>1 investigated" language in paragraph B of page 2 10271 in Exhibit 53? 3 A There's a staff member that is an 4 anti-discrimination investigator. 5 Q Is that staff member a Commissioner or someone 6 who's on staff? 7 A It is not a Commissioner. 8 Q Okay. How is that investigator assigned? 9 What's that process? Strike that. 10 How is the investigator assigned? 11 MR. KENISON-MARVIN: Objection. 12 Foundation. 13 A The Assistant Director will assign new cases 14 each month to the investigators. 15 Q Are you involved in that assignment process? 16 A No. 17 Q Am I correct -- I didn't write this down, but I 18 want to make sure I have this crystal clear. I 19 believe you earlier said that there's around 20 five investigators. Am I accurately remembering 21 your testimony? 22 A Yes. 23 Q After that investigation is completed, what does</p>

<p style="text-align: right;">41</p> <p>1 the investigator do next?</p> <p>2 MR. KENISON-MARVIN: Objection. Vague,</p> <p>3 foundation, speculation. You can answer.</p> <p>4 Q Why don't I ask you it this way. I'm not trying</p> <p>5 to hide the ball. I'm trying to streamline this</p> <p>6 process.</p> <p>7 Paragraph (b) says that the complaint is</p> <p>8 investigated and then a determination is made by</p> <p>9 the Commissioner as to whether or not there's</p> <p>10 probable cause or no probable cause. Is that an</p> <p>11 accurate reflection of the current process?</p> <p>12 A Yes.</p> <p>13 Q Why don't we take just a short break.</p> <p>14 (Recess taken at 12:23 - 12:37 p.m.)</p> <p>15 Q Director Malachi, there is one background</p> <p>16 question that I actually just forgot to ask so</p> <p>17 I'm going to go back into my introductory line</p> <p>18 of questions, and I just wanted you to describe</p> <p>19 your educational background for me. My</p> <p>20 apologies for forgetting to ask that.</p> <p>21 A How far back are you asking?</p> <p>22 Q Why don't you start post high school.</p> <p>23 A I have a degree in journalism. Are you asking</p>	<p style="text-align: right;">43</p> <p>1 Q Okay.</p> <p>2 A You know how that goes.</p> <p>3 Q I sure do. I sure do. Thank you. That's</p> <p>4 helpful.</p> <p>5 I have a few kind of followup questions on</p> <p>6 just the general complaint process, and then I</p> <p>7 promise that we are going to move on.</p> <p>8 Do allegations of discrimination before</p> <p>9 they're docketed, do they have to come from the</p> <p>10 person who has -- strike that.</p> <p>11 Can allegations of discrimination, can they</p> <p>12 be forwarded by other state agencies to be</p> <p>13 considered by the Commission for docketing?</p> <p>14 A I am unclear on what, how to answer that</p> <p>15 question. Is there a way to be more specific so</p> <p>16 I can --</p> <p>17 Q Sure. If an allegation of discrimination comes</p> <p>18 in from the Department of Education, can the</p> <p>19 Department of Education forward that allegation</p> <p>20 of discrimination to the Human Rights Commission</p> <p>21 for consideration?</p> <p>22 A To clarify --</p> <p>23 Q For consideration as to whether it would be</p>
<p style="text-align: right;">42</p> <p>1 for the school or just the degrees?</p> <p>2 Q Yes. School, degrees and approximate dates.</p> <p>3 A Ooh.</p> <p>4 Q Approximate dates.</p> <p>5 A Long time ago. Degree in journalism. Georgia</p> <p>6 State University. 1989 maybe. Master's degree</p> <p>7 in human services counseling, Liberty University</p> <p>8 maybe 2017. You're asking completed programs?</p> <p>9 Q Yes. If you have programs that you didn't</p> <p>10 complete as well, that would be helpful, too.</p> <p>11 A Currently enrolled in a doctoral program. I</p> <p>12 don't know if you're --</p> <p>13 Q Oh. I didn't know that. Where is that</p> <p>14 occurring?</p> <p>15 A Liberty University as well. That would be a</p> <p>16 doctorate of strategic leadership when</p> <p>17 completed.</p> <p>18 Q Any idea when you'll complete it? I know that's</p> <p>19 a hard question to ask for any doctoral program.</p> <p>20 A It is a very tough question to answer. A couple</p> <p>21 of years.</p> <p>22 Q Okay.</p> <p>23 A Not exactly sure. Could be less, could be more.</p>	<p style="text-align: right;">44</p> <p>1 docketed?</p> <p>2 A On whether to docket?</p> <p>3 Q Yes.</p> <p>4 A So that's a little tough to answer, but I will</p> <p>5 try my best.</p> <p>6 Q Please do.</p> <p>7 A Ultimately, a docketed charge has to be</p> <p>8 completed by the complainant. So there isn't a</p> <p>9 way, other than a complainant's attorney.</p> <p>10 Outside of the complainant themselves signing</p> <p>11 and swearing under the pains and penalties of</p> <p>12 perjury, then their attorney could do that on</p> <p>13 their behalf. That is the only way to docket a</p> <p>14 charge.</p> <p>15 Q Before an allegation of discrimination is</p> <p>16 docketed, do staff members at the HRC ever</p> <p>17 consult with other state agencies?</p> <p>18 A Could you clarify?</p> <p>19 Q I believe your testimony before is that as part</p> <p>20 of the docketing decision process there will</p> <p>21 sometimes be consultation with your attorney</p> <p>22 representative of the Department of Justice; is</p> <p>23 that fair to say?</p>

<p style="text-align: right;">45</p> <p>1 A Relatively speaking. So it's not an everyday</p> <p>2 thing to do that. If something is different,</p> <p>3 then we would consult.</p> <p>4 Q It would depend on the circumstances, right?</p> <p>5 A Context.</p> <p>6 Q Exactly. I understand what you're saying. I</p> <p>7 guess my question is whether when a complaint</p> <p>8 is -- strike that.</p> <p>9 When an allegation of discrimination comes</p> <p>10 into your office, excluding the Department of</p> <p>11 Justice, is there any other state agency that</p> <p>12 would be consulted as part of the</p> <p>13 decision-making process as to whether to docket</p> <p>14 an allegation of discrimination?</p> <p>15 A As I sit here today, I'm unaware of another</p> <p>16 agency that we would consult.</p> <p>17 Q Okay.</p> <p>18 A If I'm understanding your term.</p> <p>19 Q You are. I think you are.</p> <p>20 Has there ever been an instance that you're</p> <p>21 aware of in which an allegation of</p> <p>22 discrimination has been brought forward to your</p> <p>23 office in which members of your staff have had</p>	<p style="text-align: right;">47</p> <p>1 Malachi, on Exhibit 53 to the language 5(a) to</p> <p>2 5(d). Do you see that language?</p> <p>3 A Yes.</p> <p>4 Q I just want to confirm. Is that the same</p> <p>5 process that exists with respect to allegations</p> <p>6 of discrimination that are brought under the</p> <p>7 Freedom from Discrimination statute we</p> <p>8 referenced before in 354-A:9 to 354-A:34?</p> <p>9 A A-29 through A-34?</p> <p>10 Q Yes. The question is is it the same process.</p> <p>11 That's all.</p> <p>12 A Okay. So to specifically answer your question,</p> <p>13 what's described in the section that you</p> <p>14 mentioned on the document on Exhibit 53 is the</p> <p>15 process for the Commission full stop.</p> <p>16 Q And that would include how allegations of</p> <p>17 discrimination are handled under the Freedom</p> <p>18 from Discrimination Law in Exhibit 1 located at</p> <p>19 RSA 354-A:29 to 34. Correct? And I'm excluding</p> <p>20 from that question 193:40, to be clear.</p> <p>21 A So to be specific, what's mentioned in Exhibit</p> <p>22 53 is the Commission's process which is no</p> <p>23 different relative to any part of how the</p>
<p style="text-align: right;">46</p> <p>1 conversations with Department of Education about</p> <p>2 whether to docket that allegation?</p> <p>3 A Clarification. Are you asking ever in the</p> <p>4 history, ever?</p> <p>5 Q Since you've been here.</p> <p>6 A Relative to?</p> <p>7 Q Sorry. Relative to any allegation of</p> <p>8 discrimination with the time frame being since</p> <p>9 you've been Executive Director of the</p> <p>10 organization.</p> <p>11 A Okay. As of 2019 is when education meaning K</p> <p>12 through 12 public education which covers public</p> <p>13 schools, public charter schools as well as</p> <p>14 public academies, that is when education was</p> <p>15 added to the statute for the Commission so prior</p> <p>16 to that there were no education charges.</p> <p>17 Since then as far as I know sitting here</p> <p>18 today I mean I could certainly confer with</p> <p>19 staff, but I am unaware of a time that there was</p> <p>20 consultation with the Department of Education</p> <p>21 relative to a docketed charge.</p> <p>22 Q Okay. That's helpful.</p> <p>23 I'm going to refer you back, Director</p>	<p style="text-align: right;">48</p> <p>1 Commission is looking at a charge. So anything</p> <p>2 that's assigned to the Commission to look at as</p> <p>3 a potential allegation or I should say as a</p> <p>4 docketed charge, (a) through (d).</p> <p>5 Q And just trying to close the loop on that. So</p> <p>6 that would include allegations made under the</p> <p>7 right to freedom from discrimination statute in</p> <p>8 RSA 354-A:29 to 34. Right?</p> <p>9 A It includes the entire statute, yes.</p> <p>10 Q I want to direct your attention also on Exhibit</p> <p>11 53 to (e) on page 10271. The language that says</p> <p>12 "Finally, the Department of Education (DOE)</p> <p>13 would be the arbiters of "educator discipline"</p> <p>14 according to RSA 193:40 (IV), and as "educator"</p> <p>15 as defined by RSA 193:40 (V)." Do you see that</p> <p>16 language?</p> <p>17 A Yes.</p> <p>18 Q Just to be clear, that was your understanding as</p> <p>19 of March 4th, 2022. Correct?</p> <p>20 A Yes.</p> <p>21 Q Is that still your understanding of the law?</p> <p>22 A Yes.</p> <p>23 Q Since the Freedom from Discrimination Law was</p>

<p style="text-align: right;">49</p> <p>1 passed, and I want to be very clear, just</p> <p>2 talking now about RSA 354-A:29-34. Okay? Have</p> <p>3 you or members of the Commission conducted any</p> <p>4 trainings on those provisions, public trainings?</p> <p>5 A No.</p> <p>6 Q So there have been no trainings from the Human</p> <p>7 Rights Commission to educators; is that correct?</p> <p>8 A Correct.</p> <p>9 Q Have there been requests for the Human Rights</p> <p>10 Commission to provide such trainings by any</p> <p>11 member of the public?</p> <p>12 A I'm unsure. I would have to confer.</p> <p>13 Q Okay.</p> <p>14 (Exhibit 54 marked for identification)</p> <p>15 Q So Director Malachi, I've put before you what's</p> <p>16 been marked as Exhibit 54 and just ask you to</p> <p>17 review Exhibit 54 and let me know when you're</p> <p>18 done.</p> <p>19 A Okay.</p> <p>20 Q Have you seen Exhibit 54 before?</p> <p>21 A Maybe.</p> <p>22 Q I would just note that the top of Exhibit 54 is</p> <p>23 an email from Sarah Burke Cohen who I believe is</p>	<p style="text-align: right;">51</p> <p>1 A I don't recall.</p> <p>2 Q Do you recall you or any member of your staff</p> <p>3 ever speaking to NEA New Hampshire about</p> <p>4 clarifications on the law, sections 297 and 298</p> <p>5 of House Bill 2?</p> <p>6 A I do not recall.</p> <p>7 Q Do you recall any internal communications about</p> <p>8 whether or not to accept this invitation from</p> <p>9 NEA New Hampshire?</p> <p>10 A I don't recall.</p> <p>11 Q Any communications externally with the</p> <p>12 Department of Education about whether to accept</p> <p>13 this invitation?</p> <p>14 A I don't recall.</p> <p>15 Q I want to go back to a series of questions I</p> <p>16 asked about whether complaints can be referred</p> <p>17 by other agencies. Are you aware of any</p> <p>18 standard operating procedure or agreement that</p> <p>19 exists between the Department of Education and</p> <p>20 the Department of Justice with respect to how</p> <p>21 complaints the Department of Education receives</p> <p>22 under RSA Chapter 354-A can be referred to the</p> <p>23 Human Rights Commission?</p>
<p style="text-align: right;">50</p> <p>1 the, I want to get the title, Assistant</p> <p>2 Director, to you dated Monday, September 20th,</p> <p>3 2021, forwarding an email chain from Irv</p> <p>4 Richardson of New Hampshire NEA to the Human</p> <p>5 Rights Commission email address.</p> <p>6 So do you recall seeing this email,</p> <p>7 Director Malachi, on or about September 20th,</p> <p>8 2021?</p> <p>9 A Maybe. I mean that was multiple years ago. So</p> <p>10 lots of emails.</p> <p>11 Q I would just note that at the bottom of Exhibit</p> <p>12 54 is a request made from Mr. Richardson of NEA</p> <p>13 New Hampshire stating do you have someone</p> <p>14 associated with the Human Rights Commission that</p> <p>15 might provide further clarification on the law</p> <p>16 and answer questions from educators using a</p> <p>17 virtual platform? I have reached out to the New</p> <p>18 Hampshire Department of Education, and they</p> <p>19 indicated that I should make such a request to</p> <p>20 you.</p> <p>21 Do you recall how the Human Rights</p> <p>22 Commission responded to this request from NEA</p> <p>23 New Hampshire?</p>	<p style="text-align: right;">52</p> <p>1 A Ask that again? Because I'm unsure how to</p> <p>2 answer that.</p> <p>3 Q I'm not entirely sure what I asked.</p> <p>4 (Requested portion read back by court reporter)</p> <p>5 MR. KENISON-MARVIN: I'll object as</p> <p>6 compound.</p> <p>7 Q Is that a question you can answer?</p> <p>8 A Is there a more specific part of that question</p> <p>9 that you're asking?</p> <p>10 Q I'm going to try to ask it a better way, and I'm</p> <p>11 going to pull up a document to just assist me in</p> <p>12 asking the question.</p> <p>13 I'm just going to refer you to Exhibit 6.</p> <p>14 MR. BISSONNETTE: Nate, is that something</p> <p>15 that you could just pull? Thank you.</p> <p>16 Q So what I'm going to direct your attention to,</p> <p>17 you've never seen this before is my assumption,</p> <p>18 Director Malachi, but in the interest of</p> <p>19 streamlining this inquiry, I'm going to direct</p> <p>20 you to Bates stamped 806 on Exhibit 6. If you</p> <p>21 go to the bottom left quadrant, page 19, on page</p> <p>22 806, there's language from Ms. Diana Fenton that</p> <p>23 begins with, and this is in the middle of a</p>

<p style="text-align: right;">53</p> <p>1 sentence, quote, "we have since worked with the</p> <p>2 AG's office to come up with an SOP as to how we</p> <p>3 transfer those cases to the Human Rights</p> <p>4 Commission and to the AG's office."</p> <p>5 Do you see, my question only right now is</p> <p>6 do you see the language that I just referenced?</p> <p>7 A No.</p> <p>8 Q Okay.</p> <p>9 A What line are you on?</p> <p>10 Q Absolutely. Page 19 begins on the bottom left</p> <p>11 quadrant beginning on line 25. I'll just read</p> <p>12 it just once more just so we're on the same</p> <p>13 page. "We have since worked with the AG's</p> <p>14 office to come up with an SOP as to how we</p> <p>15 transfer those cases to the Human Rights</p> <p>16 Commission and the AG's office." Do you see</p> <p>17 that language?</p> <p>18 A I do.</p> <p>19 Q Okay. Do you know who Diana Fenton is?</p> <p>20 A Yes.</p> <p>21 Q Who is Diana Fenton?</p> <p>22 A She's an attorney.</p> <p>23 Q Okay. And I just represent to you that this is</p>	<p style="text-align: right;">55</p> <p>1 operating procedure that would refer allegations</p> <p>2 of discrimination to your office that were</p> <p>3 received by the Department of Education?</p> <p>4 A I'm sorry. Say that again?</p> <p>5 (Requested portion read back by court reporter)</p> <p>6 A I'm sorry. Read it one more time.</p> <p>7 (Requested portion read back by court reporter)</p> <p>8 A So the question is unclear because, generally</p> <p>9 speaking, the Commission covers education.</p> <p>10 Q Um-hum.</p> <p>11 A Which is separate from HB 2 or 354-A:29 through</p> <p>12 34. So are you asking, so could you clarify the</p> <p>13 question that you're asking?</p> <p>14 Q Sure. What I was asking is about any provision</p> <p>15 of 354-A which would include the provisions that</p> <p>16 have been challenged in this case in</p> <p>17 354-A:29-34. So with that I'll just, I'll kind</p> <p>18 of reframe my question.</p> <p>19 Have you been a party to any communications</p> <p>20 with the Department of Education concerning a</p> <p>21 standard operating procedure that would allow</p> <p>22 for the referral of allegations of</p> <p>23 discrimination under RSA chapter 354-A to the</p>
<p style="text-align: right;">54</p> <p>1 a portion of the hearing testimony that occurred</p> <p>2 on March 8, 2023, before the House Judiciary</p> <p>3 Hearing. So that's why I asked that prior</p> <p>4 question to you. So I'm just trying to get at</p> <p>5 what your understanding is of this SOP. So I'm</p> <p>6 going to reask the question.</p> <p>7 Are you aware of any standard operating</p> <p>8 procedure that exists that governs how cases</p> <p>9 that the Department of Education receives under</p> <p>10 RSA 354-A can be referred to the Human Rights</p> <p>11 Commission?</p> <p>12 A How allegations are referred?</p> <p>13 Q Allegations of discrimination. Yes.</p> <p>14 A That would be between the AG's office and the</p> <p>15 Department of Education.</p> <p>16 Q Okay. I'm just asking about what you're aware</p> <p>17 of. Are you though sitting here today aware of</p> <p>18 any standard operating procedure?</p> <p>19 A Sitting here today, I'm unclear. You would have</p> <p>20 to speak with the AG's office to understand what</p> <p>21 that process is.</p> <p>22 Q Have you ever had any communications with the</p> <p>23 Department of Education about a standard</p>	<p style="text-align: right;">56</p> <p>1 Commission from the Department of Education?</p> <p>2 A Okay. If I understand your question -- I'm,</p> <p>3 okay. Have I ever been a party to conversations</p> <p>4 regarding an SOP for transferring allegations</p> <p>5 from the Department of Education to the</p> <p>6 Commission.</p> <p>7 Q Precisely.</p> <p>8 A Okay. Thank you.</p> <p>9 Q No. No. It's fine. I want to make sure we're</p> <p>10 on the same page. I understand.</p> <p>11 A Have there ever been conversations between</p> <p>12 myself and the Department of Education? Broadly</p> <p>13 speaking, yes. To the specifics that you're</p> <p>14 asking, it is not my understanding that I have</p> <p>15 been.</p> <p>16 Q Okay. When you say "broadly speaking," you're a</p> <p>17 party to those communications, when would those</p> <p>18 communications have occurred and with whom?</p> <p>19 A In 2019. Somewhere thereabouts because that was</p> <p>20 when education was included in the statute so it</p> <p>21 would have been with my agency attorney and with</p> <p>22 Diana Fenton to have an understanding of some of</p> <p>23 the specific kinds of education cases we could</p>

<p style="text-align: right;">57</p> <p>1 get. So to further answer the question, 504 and 2 IEP, the Commission would not have experience in 3 that area. However, if a student was not 4 receiving that assistance due to discrimination, 5 then there would have to be a further 6 conversation to address how to move that case 7 forward regarding our confidentiality which is 8 different from other agencies and so there could 9 need to be a conversation.</p> <p>10 Q That makes sense in light of those changes in 11 2019.</p> <p>12 After the enactment of the Freedom from 13 Discrimination Law memorialized in 354-A:29 to 14 34, did you ever have a similar conversation as 15 to how cases could be referred from the DOE to 16 the Human Rights Commission under those new 17 provisions?</p> <p>18 A I believe there may have been some general 19 conversation and to be specific about the 20 generalization, the individual who is 21 potentially aggrieved has to file a charge.</p> <p>22 Q Okay.</p> <p>23 A In order for the Commission to take action.</p>	<p style="text-align: right;">59</p> <p>1 for the substance of those communications, just 2 whether the attorney would have been a party, 3 but I'm happy to give you a minute.</p> <p>4 A Yes. 5 (Director Malachi and Atty. Kenison-Marvin 6 leave the conference room and return) 7 (Requested portion read back by court reporter)</p> <p>8 A Okay. That's a lot. So the question was 9 generally speaking conversations with the 10 Department of Education relative to the Freedom 11 from Discrimination Law act.</p> <p>12 Q No. Relative to whether and how referrals could 13 be made of complaints that the Department of 14 Education receives under RSA 354-A:29 to 34, how 15 and if those referrals could be made by the 16 Department of Education to the Human Rights 17 Commission.</p> <p>18 A Okay. Now that I'm clear, I would not have been 19 a party to conversations between the Department 20 of Education and the AG's office relative to the 21 referral of cases or allegations or -- it could 22 only be an allegation.</p> <p>23 Q Okay. I want to make sure that I now understand</p>
<p style="text-align: right;">58</p> <p>1 Q Okay. So you said general conversations? Do 2 you recall when those general conversations 3 occurred and with whom?</p> <p>4 A I don't. I mean, certainly it would have been 5 after the act was signed. So some time after -- 6 I believe it went into effect in 2021. So it 7 would have been some time after June of 2021. 8 More specifically, I can't tell you.</p> <p>9 Q Okay. If you had those communications with the 10 Department of Education do you know whether or 11 not Diana Fenton would have been a participant 12 in those discussions?</p> <p>13 A Yes. I believe she would have been.</p> <p>14 Q Do you also believe that Elizabeth Brown would 15 have been a party to those communications?</p> <p>16 A I don't know.</p> <p>17 Q Do you know who Elizabeth Brown is?</p> <p>18 A I do not know who that is.</p> <p>19 Q Fair enough. Would an attorney from the 20 Department of Justice also have been a party to 21 those communications?</p> <p>22 A I need a moment.</p> <p>23 Q Please do. Just for the record I'm not asking</p>	<p style="text-align: right;">60</p> <p>1 your prior testimony. After the enactment of 2 the, let me just say the challenged law in this 3 case, have you had conversations with Attorney 4 Fenton about how allegations of discrimination 5 under the Freedom from Discrimination Law could 6 be referred by the Department of Education to 7 the Human Rights Commission?</p> <p>8 A That actually needs a little more clarity. If 9 you're asking if it was made clear that there 10 has to be someone to sign a charge, meaning a 11 complainant, then there was a conversation 12 relative to that.</p> <p>13 Q Okay.</p> <p>14 A Outside of that, meaning that general charges, 15 general, no, not that I can recall.</p> <p>16 Q That meeting that you just referenced, who was a 17 participant in that meeting?</p> <p>18 A So the meeting that I referenced was in larger 19 context of the new amendment. It was not 20 specific to an agreement or a standard operating 21 procedure between the Department of Education 22 and the Department of Justice to be clear.</p> <p>23 Q That's helpful. Do you know when this meeting</p>

<p style="text-align: right;">61</p> <p>1 occurred?</p> <p>2 A Which meeting?</p> <p>3 Q The meeting that you just referenced that was</p> <p>4 part of a larger context in which there was a</p> <p>5 discussion that someone has to sign a charge for</p> <p>6 the Commission to accept it. That meeting.</p> <p>7 A I do not recall.</p> <p>8 MR. KENISON-MARVIN: I want to object. I</p> <p>9 think that mischaracterizes the testimony.</p> <p>10 MR. BISSONNETTE: I was just trying to get</p> <p>11 at that meeting. Whatever that was discussed at</p> <p>12 that meeting.</p> <p>13 MR. KENISON-MARVIN: I don't want to make a</p> <p>14 speaking objection, but I want to try to cut to</p> <p>15 the chase if I can be helpful.</p> <p>16 MR. BISSONNETTE: Please do.</p> <p>17 MR. KENISON-MARVIN: Maybe I'm wrong in my</p> <p>18 misunderstanding, whether there's a distinction</p> <p>19 between the general meeting and the conversation</p> <p>20 with Diana Fenton.</p> <p>21 MR. BISSONNETTE: Okay.</p> <p>22 MR. KENISON-MARVIN: That's where my</p> <p>23 objection is based.</p>	<p style="text-align: right;">63</p> <p>1 objection. To the extent that you have a</p> <p>2 recollection of conversations that anyone was</p> <p>3 asking attorneys for legal advice or how law</p> <p>4 would apply, that information we would claim a</p> <p>5 privilege to and I would instruct you not to</p> <p>6 provide the details of those conversations as</p> <p>7 well as any decisions that were being made,</p> <p>8 deliberations related to decisions to be made,</p> <p>9 substance of those conversations. So I would</p> <p>10 instruct you not to provide those details on the</p> <p>11 basis of those privileges. To the extent you</p> <p>12 can answer the question without providing,</p> <p>13 there's information in response to the question</p> <p>14 that you could provide that's not what I</p> <p>15 described, you can answer it.</p> <p>16 MR. BISSONNETTE: I'm going to withdraw the</p> <p>17 question real quickly in light of that</p> <p>18 objection.</p> <p>19 Q Back to this meeting I would, though, in an</p> <p>20 effort to try to probe that privilege a bit,</p> <p>21 just try to get a handle on who all the</p> <p>22 participants were in that meeting if you could</p> <p>23 remember. Just if you could list them all out.</p>
<p style="text-align: right;">62</p> <p>1 Q May I have, Cindy, I'm sorry to burden you. Can</p> <p>2 I just have read back to me the portion of</p> <p>3 Director Malachi's response in which she talks</p> <p>4 about the larger context.</p> <p>5 (Requested portion read back by court reporter)</p> <p>6 Q So my question is what do you remember about</p> <p>7 that meeting in which that larger context was</p> <p>8 referenced and who participated in that meeting?</p> <p>9 A The meeting would have been some time ago. I am</p> <p>10 not a hundred percent clear on all of the</p> <p>11 individuals that may have been there.</p> <p>12 Q Okay. What do you recall, is there anything you</p> <p>13 could recall sitting here today about the</p> <p>14 substance of that meeting that was part of a</p> <p>15 larger context?</p> <p>16 A Generally speaking, my recollection, I believe</p> <p>17 we may have talked about the case processing</p> <p>18 process.</p> <p>19 Q Okay.</p> <p>20 A I know that attorneys were present.</p> <p>21 Q Okay. When you refer to "case processing," do</p> <p>22 you recall any specifics about that?</p> <p>23 MR. KENISON-MARVIN: I'll state a limited</p>	<p style="text-align: right;">64</p> <p>1 A As I stated, that was several years ago so I</p> <p>2 don't have a complete recollection of everyone</p> <p>3 that was in the room.</p> <p>4 Q Okay. Do you know if Attorney Sean Locke was in</p> <p>5 the room? Any recollection?</p> <p>6 A I do not recall.</p> <p>7 Q Okay. Were other state agencies represented at</p> <p>8 that meeting?</p> <p>9 A Could you be more specific?</p> <p>10 Q Sure. Did the Department of Education have a</p> <p>11 representative at that meeting?</p> <p>12 A Yes.</p> <p>13 Q Who was that representative?</p> <p>14 A In my hazy recollection I believe their attorney</p> <p>15 was there which would have been Chris Bond I</p> <p>16 believe at the time.</p> <p>17 Q Okay. And do you recall anyone else that was</p> <p>18 present during this meeting?</p> <p>19 A The Commissioner might have been there, but I am</p> <p>20 not a hundred percent sure.</p> <p>21 Q You may have answered this and I forget the</p> <p>22 response and I apologize, but obviously we know</p> <p>23 that the challenged law in this case was enacted</p>

<p style="text-align: right;">65</p> <p>1 in June 2021. Do you recall when this meeting</p> <p>2 occurred after June 2021?</p> <p>3 A I do not recall.</p> <p>4 Q Okay. Do you recall whether any decisions were</p> <p>5 made during this meeting about how to process</p> <p>6 claims of discrimination that are made under</p> <p>7 354-A:29 to 34?</p> <p>8 A I don't recall the full context or content of</p> <p>9 the conversations.</p> <p>10 Q I want to kind of now pivot from that meeting,</p> <p>11 Director Malachi. I know that you said earlier</p> <p>12 that there was a discussion or statement made</p> <p>13 where you said that for a case to be docketed by</p> <p>14 the HRC that someone has to sign a charge. Am I</p> <p>15 accurately remembering your testimony?</p> <p>16 A I would hope I would have stated that the</p> <p>17 complainant has to sign a charge.</p> <p>18 Q Yes, please. I'm sorry.</p> <p>19 A Or their attorney.</p> <p>20 Q Thank you. Was that something that was</p> <p>21 discussed in a separate conversation with</p> <p>22 Attorney Fenton?</p> <p>23 A I don't recall.</p>	<p style="text-align: right;">67</p> <p>1 conversations about whether the Human Rights</p> <p>2 Commission could accept that as an allegation</p> <p>3 and then proceed to make a determination as to</p> <p>4 whether or not it should be docketed.</p> <p>5 A I'm unsure of any -- I don't recall any</p> <p>6 conversations.</p> <p>7 Q Okay. I don't want to know the contents, but I</p> <p>8 do have to ask the question. Did you ever</p> <p>9 receive a document from Attorney Sean Locke that</p> <p>10 generally discussed how allegations of</p> <p>11 discrimination that the DOE may receive could be</p> <p>12 referred to the Human Rights Commission? Just</p> <p>13 asking whether you received a document along</p> <p>14 those lines.</p> <p>15 A I don't recall.</p> <p>16 Q Okay. Last question along these lines, and I'm</p> <p>17 going to wrap up this inquiry. I'm just going</p> <p>18 to submit to you that Representative Glenn</p> <p>19 Cordelli stated in March 2023 that the Attorney</p> <p>20 General's office has, quote, "been more</p> <p>21 cooperative," end quote, with respect to, quote,</p> <p>22 "getting cases referred to the Human Rights</p> <p>23 Commission." This was stated around March 2023.</p>
<p style="text-align: right;">66</p> <p>1 Q Aside from the meeting that you just referenced</p> <p>2 moments ago that was part of a larger context,</p> <p>3 do you recall any other communications with any</p> <p>4 other state officials outside of the HRC about</p> <p>5 how allegations of discrimination could be</p> <p>6 referred from the Department of Education to the</p> <p>7 Human Rights Commission?</p> <p>8 A Could you ask that again, please?</p> <p>9 Q Sure. Excluding the meeting that we just</p> <p>10 referenced that was part of a larger context, do</p> <p>11 you recall having any other discussions with</p> <p>12 state officials outside of the Human Rights</p> <p>13 Commission about how allegations of</p> <p>14 discrimination could be referred by the</p> <p>15 Department of Education to the Human Rights</p> <p>16 Commission?</p> <p>17 A Are you asking if it's an allegation or are you</p> <p>18 asking if it's a charge?</p> <p>19 Q Allegation of discrimination. Hasn't been</p> <p>20 docketed, it comes to the Department of</p> <p>21 Education, Department of Education may think</p> <p>22 that that could constitute a violation under</p> <p>23 Exhibit 1, the challenged law in this case, and</p>	<p style="text-align: right;">68</p> <p>1 Do you know what Representative Cordelli is</p> <p>2 talking about there?</p> <p>3 A You would have to ask him.</p> <p>4 Q But you've never had communications with the</p> <p>5 Department of Education, the Department of</p> <p>6 Justice about the Attorney General's office</p> <p>7 becoming more cooperative with respect to</p> <p>8 getting cases referred to the Human Rights</p> <p>9 Commission; is that true?</p> <p>10 A I don't recall any conversations of that type.</p> <p>11 Q Okay. With respect to the challenged law in</p> <p>12 this case in Exhibit 1, was your office ever</p> <p>13 involved in drafting the language of Exhibit 1</p> <p>14 when HB 2 was in the Senate, to be considered in</p> <p>15 the Senate?</p> <p>16 A Could I see Exhibit 1?</p> <p>17 Q Yes. Of course.</p> <p>18 A Could you ask me your question again, please?</p> <p>19 (Requested portion read back by court reporter)</p> <p>20 A No.</p> <p>21 Q Were you ever asked for feedback while Exhibit 1</p> <p>22 was being considered in the Senate by</p> <p>23 legislators concerning the language in Exhibit</p>

<p>69</p> <p>1 1?</p> <p>2 A No.</p> <p>3 Q You can set that aside. Thank you, Director</p> <p>4 Malachi.</p> <p>5 I just did have a couple followup questions</p> <p>6 about this referral business, and I'm sorry to</p> <p>7 belabor the point.</p> <p>8 Besides yourself, and I know we went over</p> <p>9 the conversations that you may or may not have</p> <p>10 been involved in with respect to whether</p> <p>11 allegations could be referred, are you aware of</p> <p>12 any communications that Commissioners within the</p> <p>13 Human Rights Commission may have had with the</p> <p>14 Department of Justice or the DOE about how</p> <p>15 allegations of discrimination could be referred</p> <p>16 by the DOE to the HRC?</p> <p>17 A I don't recall having any knowledge.</p> <p>18 Q Have there been any writings issued by either</p> <p>19 you or the Commissioners to staff about whether</p> <p>20 to accept allegations of discrimination under</p> <p>21 the challenged law from the Department of</p> <p>22 Education?</p> <p>23 A Could you be more specific on the writings?</p>	<p>71</p> <p>1 believe the Attorney General's office confirmed</p> <p>2 that during the hearing, but my question to you</p> <p>3 is is that your understanding of the process</p> <p>4 with respect to when the Department of Education</p> <p>5 under their code of conduct can pursue a charge</p> <p>6 under the challenged law?</p> <p>7 A Could you reread the part that you'd like me to</p> <p>8 answer.</p> <p>9 Q Sure. Quote, "The Department of Education as a</p> <p>10 matter of practice is simply declining to</p> <p>11 consider any allegation that these statutes are</p> <p>12 being violated by any teacher until and unless</p> <p>13 that person making the complaint has gone to the</p> <p>14 Human Rights Commission."</p> <p>15 My question to you is is that your</p> <p>16 understanding as well of when the Department of</p> <p>17 Education can pursue action against an educator</p> <p>18 under the challenged law?</p> <p>19 A If I'm understanding the question, the answer</p> <p>20 would be statutorily someone has to come to the</p> <p>21 Commission first.</p> <p>22 Q Okay.</p> <p>23 A And then once we have completed our process and</p>
<p>70</p> <p>1 Q Sure. By writing, what I mean are any</p> <p>2 directive, policies, or guidance.</p> <p>3 A No.</p> <p>4 Q The communication that you had as part of a</p> <p>5 larger context that we referenced before, did</p> <p>6 you brief your fellow Commissioners about that</p> <p>7 conversation? Strike that.</p> <p>8 That conversation that you referenced in</p> <p>9 your earlier testimony that was part of a larger</p> <p>10 context, did you brief the Commissioners about</p> <p>11 that communication?</p> <p>12 A Sitting here today, I don't recall.</p> <p>13 Q I'm going to switch gears here. Okay? Director</p> <p>14 Malachi, there was a statement made by the</p> <p>15 Attorney General's office at the Motion to</p> <p>16 Dismiss hearing in this case, quote, "The</p> <p>17 Department of Education as a matter of practice</p> <p>18 is simply declining to consider any allegation</p> <p>19 that these statutes are being violated by any</p> <p>20 teacher until and unless that person making the</p> <p>21 complaint has gone to the Human Rights</p> <p>22 Commission." And I think I can go back to make</p> <p>23 sure I'm accurately reflecting that, but I</p>	<p>72</p> <p>1 any appeals that the person may have, then it</p> <p>2 moves on to wherever it goes after that.</p> <p>3 Q Okay. Where does that understanding come from?</p> <p>4 Is that in a writing, in a document? What's the</p> <p>5 basis of your statement that someone first has</p> <p>6 to come to the HRC?</p> <p>7 MR. KENISON-MARVIN: Objection to the</p> <p>8 extent it calls for a legal contention. You can</p> <p>9 answer.</p> <p>10 A Statutorily to file a charge of discrimination</p> <p>11 under 354-A a Complainant has to come to the</p> <p>12 Commission, whether it's employment, public</p> <p>13 accommodation, housing, or K through 12</p> <p>14 education, and as such unless outlined</p> <p>15 differently there would be any other amended</p> <p>16 section based on the statute.</p> <p>17 Q Do you have any other basis for that besides</p> <p>18 what's in the statute?</p> <p>19 MR. KENISON-MARVIN: Same objection.</p> <p>20 Q Any other basis for believing that?</p> <p>21 A I'm sorry? Restate?</p> <p>22 Q Besides what's in the statute, do you have any</p> <p>23 other reason for believing that a complainant</p>

<p style="text-align: right;">73</p> <p>1 must first seek relief before the Human Rights 2 Commission before action can be taken against an 3 educator? 4 A The statute is the guidance. 5 Q Okay. I'm just going to direct your attention 6 back to Exhibit 1, and page PL 006 starting at 7 line 23. It goes on to page 7, line 15. So 8 this is the statute RSA 193:40, and when you see 9 that language just let me know. 10 A I'm sorry. Line 23 through? 11 Q I'm sorry. Line 23 to the next page, line 19, 12 and it's RSA 193:40 on Exhibit 1. 13 A I see it. 14 Q Okay. Do you have any authority in enforcing 15 that statute? 16 MR. KENISON-MARVIN: Objection. Legal 17 contention. You can answer. 18 A The Commission does not have jurisdiction over 19 193:40. 20 Q So if someone brought a claim to the Human 21 Rights Commission under RSA 193:40, your view is 22 you would have no jurisdiction to adjudicate it; 23 is that correct?</p>	<p style="text-align: right;">75</p> <p>1 A Could you clarify which statute? 2 Q I'm going to withdraw the question. 3 I would like to direct your attention, 4 Director Malachi, back to Exhibit 1. I'm just 5 going to direct your attention in particular to 6 page 004, line 37. Bear with me one second, 7 please. 8 On line 36 on page PL 004 of Exhibit 1 9 there's language there that states, quote, "no 10 public employer, either directly or through the 11 use of an outside contractor, shall teach, 12 advocate, instruct or train any employee, 13 student, service recipient, contractor, staff 14 member, inmate or any other individual group, 15 any one or more of the following." Do you see 16 that language? 17 A Yes. 18 Q What I'm going to just kind of focus you on is 19 the language "shall teach, advocate, instruct or 20 train" in the statute. Okay? So that's the 21 language that I'm targeting right now in my next 22 line of questions on line 37 on page PL 004 of 23 Exhibit 1.</p>
<p style="text-align: right;">74</p> <p>1 MR. KENISON-MARVIN: Same objection. 2 A The Commission has jurisdiction over 354-A. 3 Q And RSA 193:40 is not within RSA 354-A so is it 4 fair to say in your view you do not believe the 5 Commission has jurisdiction to hear a claim 6 under RSA 193:40? 7 MR. KENISON-MARVIN: Same objection. 8 A As I sit here today it would be my understanding 9 that the Commission only has authority over 10 354-A. 11 Q Do you know sitting here today who would have 12 jurisdiction over a complaint made exclusively 13 under 193:40? 14 MR. KENISON-MARVIN: Same objection. 15 A I do not have expertise in 193 so whose RSA that 16 belongs to would be the body that has authority 17 over 193:40. 18 Q Okay. Besides the statute has there been 19 written guidance that explains that a person 20 must first go to the Human Rights Commission 21 before action could be taken against the 22 teacher? 23 MR. KENISON-MARVIN: Same objection.</p>	<p style="text-align: right;">76</p> <p>1 So my question is does the Human Rights 2 Commission have any internal policy or guidance 3 as to what the terms mean, "teach, advocate, 4 instruct or train" under that statute? 5 A No. 6 Q Is there any internal guidance within the 7 Commission explaining whether or not the phrase 8 "teach, advocate, instruct or train" would 9 include teacher-facilitated group instruction in 10 a classroom? 11 A No. 12 Q Is there any written guidance or policy that 13 would explain whether or not the phrase "teach, 14 advocate, instruct or train" would include 15 assigning a book to students in a classroom? 16 A I'm sorry. Internal policy or the FAQ? 17 Q Any internal policy -- that's a fair question. 18 So any internal policy excluding the FAQ as 19 to whether the phrase "teach, advocate, instruct 20 or train" includes assigning a book to students? 21 A I'm sorry. Is there a policy, no. 22 Q You just referenced guidance. Were you 23 referring to the July 2021 guidance that was</p>

<p style="text-align: right;">77</p> <p>1 issued with respect to the challenged law?</p> <p>2 A I don't know the date. If you're asking about</p> <p>3 the FAQ provided by the Attorney General, that</p> <p>4 is what I'm speaking of.</p> <p>5 Q I'm just going to direct your attention to --</p> <p>6 MR. BISSONNETTE: If you wouldn't mind just</p> <p>7 pulling out real quick, Nate, just Exhibit 24.</p> <p>8 MR. KENISON-MARVIN: For the witness?</p> <p>9 MR. BISSONNETTE: You know what? Pull that</p> <p>10 one back. I'm sorry.</p> <p>11 (Exhibit 56 marked for identification)</p> <p>12 Q So my question to you is going to be, after</p> <p>13 you've reviewed it, are these the FAQs that you</p> <p>14 just referenced that are in Exhibit 55.</p> <p>15 A Sitting here today without comparing to any</p> <p>16 notes I might have, it does appear that this is</p> <p>17 most likely the Frequently Asked Questions</p> <p>18 guidance.</p> <p>19 Q That's all I wanted to know. So setting aside</p> <p>20 the contents of Exhibit 55, is there any other</p> <p>21 internal policy or procedure that exists within</p> <p>22 the Commission that defines what it means to</p> <p>23 "teach, advocate, instruct or train" under the</p>	<p style="text-align: right;">79</p> <p>1 the complainant is pursuing a charge.</p> <p>2 Q Okay. So the reference "legal standard." I</p> <p>3 just want to make sure. Is what you're</p> <p>4 referring to just the language of the statute in</p> <p>5 RSA 354-A:29-34?</p> <p>6 A To that I understand, yes.</p> <p>7 Q Are there any other standards that you're using</p> <p>8 in deciding whether or not an allegation of</p> <p>9 discrimination brought under RSA 354-A:29-34</p> <p>10 should be docketed?</p> <p>11 MR. KENISON-MARVIN: Objection to the</p> <p>12 extent it misstates prior testimony.</p> <p>13 A Could you be a little more specific?</p> <p>14 Q How about this. Beyond the FAQs that we just</p> <p>15 presented to you in Exhibit 54, and beyond the</p> <p>16 language of the statute in RSA 354-A:29-34, is</p> <p>17 there any other policy or guidance that the</p> <p>18 Commission uses in deciding whether an</p> <p>19 allegation of discrimination under RSA</p> <p>20 354-A:29-34 should be docketed?</p> <p>21 A No.</p> <p>22 Q Can we take a two-minute break?</p> <p>23 (Discussion off the record)</p>
<p style="text-align: right;">78</p> <p>1 provisions of RSA 354-A:31 in Exhibit 1?</p> <p>2 A No.</p> <p>3 Q I'm sorry to bounce around, Director Malachi. I</p> <p>4 know moment a ago you said you're not an expert</p> <p>5 on 193:40 in Exhibit 1. Is there anyone at the</p> <p>6 Human Rights Commission that would be an expert</p> <p>7 in RSA 193:40 and what it means and how it</p> <p>8 operates?</p> <p>9 A No.</p> <p>10 Q With respect to how an allegation of</p> <p>11 discrimination is docketed, and the prima facie</p> <p>12 determination that's made, are there any</p> <p>13 internal policies or procedures within the</p> <p>14 Commission as to when a prima facie case has</p> <p>15 been made under RSA 354-A:29-34?</p> <p>16 A Specifically speaking, no.</p> <p>17 Q Do you know sitting here today how decisions are</p> <p>18 made as to whether a prima facie case has been</p> <p>19 satisfied under the provisions in RSA</p> <p>20 354-A:29-34?</p> <p>21 A Generally speaking, there's a legal standard and</p> <p>22 so when that legal standard is met, then the</p> <p>23 allegation can then become a charge, provided</p>	<p style="text-align: right;">80</p> <p>1 (Lunch recess taken 1:51 - 2:32 p.m.)</p> <p>2 Q So we're back on. I'm just going to have your</p> <p>3 attorney put before you what's been previously</p> <p>4 marked as Exhibits 12 and 13. I'd just ask you</p> <p>5 to review Exhibits 12 and 13 briefly and just to</p> <p>6 let me know when you finish.</p> <p>7 Thank you, Director Malachi. With respect</p> <p>8 to Exhibit 12, I would just represent to you</p> <p>9 that the cover page to Exhibit 12 is a document</p> <p>10 I created just as a cover sheet to the September</p> <p>11 7, 2021, AG memo that was affixed to the Mejia</p> <p>12 and Philibotte complaint in this case. So I</p> <p>13 just wanted to flag that for you.</p> <p>14 But with respect to PL 425 to 433 on</p> <p>15 Exhibit 12, have you seen this document before?</p> <p>16 A To the extent that this is the Attorney</p> <p>17 General's opinion, without comparing it to the</p> <p>18 actual copy that I have, I can't state that this</p> <p>19 is exactly it. However, if this is the Attorney</p> <p>20 General's opinion, then I've seen his opinion.</p> <p>21 Q Okay. Any reason though to believe sitting here</p> <p>22 today that this document that I've put before</p> <p>23 you at PL 425 to 433 is not the Attorney</p>

<p style="text-align: right;">81</p> <p>1 General's opinion from September 7, 2021?</p> <p>2 A I don't have, I don't have my copy and I'm just</p> <p>3 looking at this copy. So without comparing,</p> <p>4 then I would say I can't be a hundred percent</p> <p>5 sure. However, if you're stating that it's the</p> <p>6 Attorney General's opinion that I have a copy</p> <p>7 of, then it's probably that.</p> <p>8 Q Do you have a copy handy in your office?</p> <p>9 A I'm not sure.</p> <p>10 Q Okay.</p> <p>11 A It might be in a file.</p> <p>12 Q I guess my question is without having looked at</p> <p>13 the copy in your office, do you have any reason</p> <p>14 to believe having reviewed Exhibit 12 that this</p> <p>15 would not be the version of the Attorney General</p> <p>16 memo that you have in your office?</p> <p>17 A Specifically to answer your question, I don't</p> <p>18 have it memorized so I couldn't say that this is</p> <p>19 the exact copy.</p> <p>20 Q I just want to close the loop without having to</p> <p>21 send you on a fishing expedition so I do need an</p> <p>22 answer to this.</p> <p>23 Do you have any reason to believe after</p>	<p style="text-align: right;">83</p> <p>1 A As I sit here today I don't have a specific</p> <p>2 reason to think this isn't it. However, I'm not</p> <p>3 a hundred percent sure, but I don't have a</p> <p>4 specific objection or question or issue.</p> <p>5 Q Thank you. I appreciate that. My question is</p> <p>6 without getting into -- strike that.</p> <p>7 Does this memo govern how the Human Rights</p> <p>8 Commission enforces RSA 354-A:29 to 34?</p> <p>9 MR. KENISON-MARVIN: Objection. Vague.</p> <p>10 Legal contention. You can answer.</p> <p>11 A When you say "govern," could you be more clear?</p> <p>12 Q Maybe I'll just ask the question more generally.</p> <p>13 Does Exhibit 12 have any impact on how the</p> <p>14 Human Rights Commission enforces RSA 354-A:29 to</p> <p>15 34?</p> <p>16 MR. KENISON-MARVIN: Same objection. You</p> <p>17 can answer.</p> <p>18 A I'm not still a hundred percent certain that I</p> <p>19 understand your question. However, all of 354-A</p> <p>20 is governed by the statute as it's written as</p> <p>21 well as the legal standard.</p> <p>22 Q So direct your attention to the first page of</p> <p>23 Exhibit 12 Bates stamped PL 00425. This is</p>
<p style="text-align: right;">82</p> <p>1 having reviewed the pages affixed to Exhibit 12</p> <p>2 that this is not the version of the September</p> <p>3 7th, 2021, version that's in your office?</p> <p>4 A As I stated, I don't have it in front of me.</p> <p>5 Q Okay.</p> <p>6 A If you're stating that you have made no changes,</p> <p>7 then I guess I have to trust you.</p> <p>8 Q Okay. I'm going to have to, in light of that</p> <p>9 testimony I'm going to have to ask her to go get</p> <p>10 a copy. Sorry.</p> <p>11 MR. KENISON-MARVIN: She said maybe, I</p> <p>12 think.</p> <p>13 MR. BISSONNETTE: Can we go off the record?</p> <p>14 (Discussion off the record)</p> <p>15 (Director Malachi and Atty. Kenison-Martin</p> <p>16 leave the conference room and return</p> <p>17 2:39 - 2:46 p.m.)</p> <p>18 Q Director Malachi, without having seen the</p> <p>19 version of Exhibit 12 that resides in the</p> <p>20 offices of the Commission, do you have any</p> <p>21 reason to believe that the document following</p> <p>22 Exhibit 12 is not an accurate depiction of the</p> <p>23 September 7, 2021, AG memo?</p>	<p style="text-align: right;">84</p> <p>1 directed to Chairman Palardy and to you,</p> <p>2 Director Malachi, and the first sentence states,</p> <p>3 "You requested, on behalf of the New Hampshire</p> <p>4 Commission for Human Rights, that this office</p> <p>5 provide an official Attorney General opinion</p> <p>6 concerning the scope and application of the</p> <p>7 recently passed sections 297 and 298 of House</p> <p>8 Bill 2." Do you see that language?</p> <p>9 A I do.</p> <p>10 Q Did the Commission request an official Attorney</p> <p>11 General opinion concerning the scope and</p> <p>12 application of Sections 297 and 298 of House</p> <p>13 Bill 2?</p> <p>14 A I'm not sure that that, your question, I think</p> <p>15 it may speak to privilege.</p> <p>16 Q I think with respect to that particular question</p> <p>17 I'm just referencing confirmation as to what's</p> <p>18 in a public document.</p> <p>19 MR. KENISON-MARVIN: Object to maybe</p> <p>20 compound question. Just clarify now what the</p> <p>21 question is on the table?</p> <p>22 Q Sure. I just want to confirm whether it is</p> <p>23 accurate that the Commission for Human Rights</p>

<p>85</p> <p>1 requested that the Attorney General's office</p> <p>2 provide an official Attorney General opinion</p> <p>3 concerning the scope and application of the</p> <p>4 recently passed Sections 297 and 298?</p> <p>5 MR. KENISON-MARVIN: I'll object on</p> <p>6 attorney-client privilege to the extent the</p> <p>7 question relates to not what's stated in the</p> <p>8 document but with respect to specific requests</p> <p>9 or communications made to the Attorney General</p> <p>10 by the HRC.</p> <p>11 MR. BISSONNETTE: And I am not, just to be</p> <p>12 very clear because I understand the objection, I</p> <p>13 am not asking for communications beyond seeking</p> <p>14 confirmation that there was a request from the</p> <p>15 Human Rights Commission to the Attorney</p> <p>16 General's office along the lines of the first</p> <p>17 sentence on page 425 of Exhibit 12.</p> <p>18 MR. KENISON-MARVIN: Mind if we step out</p> <p>19 for just a second?</p> <p>20 (Director Malachi and Atty. Kenison-Marvin</p> <p>21 leave the conference room and return</p> <p>22 2:50 - 3:42 p.m.)</p> <p>23 Q So Director Malachi, I'm just going to obviously</p>	<p>87</p> <p>1 Q Yes. Excluding the contents of any</p> <p>2 communications that the Commission may have had</p> <p>3 with its lawyers at the Department of Justice,</p> <p>4 could you explain why the Commission sought the</p> <p>5 opinion?</p> <p>6 MR. KENISON-MARVIN: Objection to the</p> <p>7 extent it misstates the witness's answer to the</p> <p>8 prior question.</p> <p>9 Q Can I withdraw the question? I'd just like to</p> <p>10 hear back exactly what the witness said. Thank</p> <p>11 you.</p> <p>12 (Requested portion read back by court reporter)</p> <p>13 Q Excluding any communications that the Commission</p> <p>14 had with its lawyers at the New Hampshire</p> <p>15 Department of Justice, can you explain why the</p> <p>16 Commission requested an opinion?</p> <p>17 A I'm unclear if that's privileged communication.</p> <p>18 MR. KENISON-MARVIN: The question doesn't</p> <p>19 include any information that was discussed with</p> <p>20 attorneys. I believe I understand it to be</p> <p>21 attorneys at DOJ, but to the extent there was</p> <p>22 counsel not only with DOJ attorneys but any</p> <p>23 attorney representing HRC that was a privileged</p>
<p>86</p> <p>1 reference the first sentence on Exhibit 12</p> <p>2 beginning with the statement you requested on</p> <p>3 behalf of the New Hampshire Commission for Human</p> <p>4 Rights that this office provide an official</p> <p>5 Attorney General opinion concerning the scope</p> <p>6 and application of the recently passed Sections</p> <p>7 297 and 298 of House Bill 2. Do you see that</p> <p>8 language in Exhibit 12?</p> <p>9 A Yes.</p> <p>10 Q So my question is did the Commission for Human</p> <p>11 Rights request that the Attorney General's</p> <p>12 office provide an official opinion concerning</p> <p>13 the scope and application of Section 297 and 298</p> <p>14 of House Bill 2?</p> <p>15 A As it relates specifically to me, did I go to</p> <p>16 the AG and request an opinion, no. However, I</p> <p>17 think it would be fair to say that the</p> <p>18 Commission requested an opinion.</p> <p>19 Q Okay. Excluding any communications that the</p> <p>20 Commission may have had with its lawyers at the</p> <p>21 Department of Justice, can you explain to me why</p> <p>22 the Commission sought an opinion?</p> <p>23 A I'm sorry. Could you say that again?</p>	<p>88</p> <p>1 communication seeking advice to do something or</p> <p>2 whether or not to do something, that would be</p> <p>3 privileged, but I understand the question not to</p> <p>4 ask for that information about content of</p> <p>5 communications with attorneys that were</p> <p>6 representing the HRC; is that correct?</p> <p>7 MR. BISSONNETTE: That is. Yes.</p> <p>8 A With that clear, could you, I'm sorry, could you</p> <p>9 ask the question one more time so I could</p> <p>10 answer?</p> <p>11 Q Understood. Just going to have it read back.</p> <p>12 Thank you, Cindy.</p> <p>13 (Requested portion read back by court reporter)</p> <p>14 A The Commission was aware of concern from the</p> <p>15 public about Sections 297 and 298 and requested</p> <p>16 the opinion.</p> <p>17 Q Okay. And do you recall the specific concerns</p> <p>18 from the public that were raised?</p> <p>19 A No. I don't remember. I don't recall the</p> <p>20 specifics.</p> <p>21 Q Okay. Were those specific concerns that you're</p> <p>22 referencing, did they reflect the general</p> <p>23 concern that the law was confusing?</p>

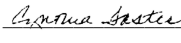
<p style="text-align: right;">89</p> <p>1 A I couldn't speak to my recollection of the</p> <p>2 conversation. It would be reflected in whatever</p> <p>3 the opinion was.</p> <p>4 Q Is that reflected, just to be clear, I'm not</p> <p>5 getting into communications with lawyers here,</p> <p>6 but are those concerns reflected on the first</p> <p>7 sentence of the second paragraph on page 1 in</p> <p>8 which the memo states, "Some have voiced</p> <p>9 concerns that these new statutes are confusing</p> <p>10 and that public employers in schools will</p> <p>11 struggle to understand the scope of the new</p> <p>12 prohibitions"?</p> <p>13 A That could be.</p> <p>14 Q Sitting here today, can you recall anything more</p> <p>15 specific about the concerns that are referenced</p> <p>16 in Exhibit 12 and that were a reason for why the</p> <p>17 Commission requested an opinion?</p> <p>18 A Sitting here today, no.</p> <p>19 Q I'm just going to refer you to you to Exhibit</p> <p>20 13, Director Malachi, that's been placed in</p> <p>21 front of you. I would just submit to you this</p> <p>22 is a document produced not by the HRC but by the</p> <p>23 Department of Education. That seems to suggest</p>	<p style="text-align: right;">91</p> <p>1 Q You can set those aside.</p> <p>2 I did have another question on Exhibit 12.</p> <p>3 My apologies. How does this memo impact if at</p> <p>4 all how the Commission enforces RSA 354-A:29 to</p> <p>5 34?</p> <p>6 MR. KENISON-MARVIN: Objection. Compound</p> <p>7 and foundation.</p> <p>8 Q I'm going to withdraw. I'm not going to use the</p> <p>9 term "impact." I'm trying to figure out if this</p> <p>10 is a memo you use in enforcing RSA 354-A:29-34</p> <p>11 so I'm just going to ask the question that way.</p> <p>12 Does Exhibit 12 guide how the Commission</p> <p>13 for Human Rights enforces RSA 354-A:29 to 34?</p> <p>14 A So I'm a bit unclear on the question. Are you</p> <p>15 asking me specifically this document? Or does</p> <p>16 an AG opinion affect how the Commission does its</p> <p>17 work?</p> <p>18 Q No, good question. I'm simply referring to</p> <p>19 Exhibit 12 and whether it guides how the</p> <p>20 Commission applies specifically RSA 354-A:29 to</p> <p>21 34?</p> <p>22 A If I understand your question, inasmuch as it is</p> <p>23 information from the Attorney General of the</p>
<p style="text-align: right;">90</p> <p>1 an accepted meeting, I'm not sure by whom,</p> <p>2 concerning Review and Discuss Procedure/Process</p> <p>3 for Incidences of Anti-Discrimination in which</p> <p>4 there potentially were as attendees you and</p> <p>5 Commissioner Edelblut.</p> <p>6 Have I accurately described at least what</p> <p>7 Exhibit 13 reflects?</p> <p>8 A I don't have a recollection of this.</p> <p>9 Q Do you recall a meeting with Commissioner</p> <p>10 Edelblut on or about September 8, 2021?</p> <p>11 A I don't recall a specific meeting.</p> <p>12 Q Okay. Does the fact that this September 8 date</p> <p>13 on Exhibit 13, does the fact that that's one day</p> <p>14 after the September 7, 2021, AG memo in Exhibit</p> <p>15 12 refresh your recollection at all about</p> <p>16 whether a meeting occurred and what may have</p> <p>17 been discussed?</p> <p>18 A No.</p> <p>19 Q Sitting here today, you have no recollection,</p> <p>20 just to be clear, you have no recollection of</p> <p>21 any meeting with Commissioner Edelblut on or</p> <p>22 about September 8, 2021, correct?</p> <p>23 A No.</p>	<p style="text-align: right;">92</p> <p>1 State of New Hampshire, then yes. However, it</p> <p>2 doesn't change our process.</p> <p>3 Q Okay. I guess my question is how do you use</p> <p>4 this document? How does the Commission use</p> <p>5 Exhibit 12?</p> <p>6 A If you're asking do we use it in our day-to-day</p> <p>7 work, is that what you're asking?</p> <p>8 Q How does the Commission use Exhibit 12 with</p> <p>9 respect to its duties in enforcing RSA 354-A:29</p> <p>10 to 34?</p> <p>11 MR. KENISON-MARVIN: Objection.</p> <p>12 Foundation.</p> <p>13 A Please ask the question again?</p> <p>14 Q Cindy, would you mind reading the question back?</p> <p>15 (Requested portion read back by court reporter)</p> <p>16 A Respective of this document we don't.</p> <p>17 Q Does it in any way guide how the Commission</p> <p>18 applies RSA 354-A:29 to 34?</p> <p>19 A Are you asking additionally? Outside of the</p> <p>20 statute?</p> <p>21 Q Yes. I'm just trying to figure out how this</p> <p>22 memo is used by your office. So we've</p> <p>23 established, correct, that the Commission</p>

<p style="text-align: right;">93</p> <p>1 requested an AG memo, right?</p> <p>2 A Yes.</p> <p>3 Q We've established that the Commission received</p> <p>4 an AG memo, right?</p> <p>5 A That would be fair.</p> <p>6 Q So my question is having requested it and</p> <p>7 received it, does Exhibit 12 guide in any way</p> <p>8 the Commission's application of RSA 354-A:29 to</p> <p>9 34?</p> <p>10 MR. KENISON-MARVIN: Objection.</p> <p>11 Foundation.</p> <p>12 A Inasmuch as the document was requested by the</p> <p>13 Commission, it was requested for the public.</p> <p>14 Q Okay. So this wasn't requested with the intent</p> <p>15 to assist the Commission in enforcing the</p> <p>16 statute? Do I understand your testimony</p> <p>17 correctly?</p> <p>18 A Correct.</p> <p>19 Q Has the Commission since the issuance of the</p> <p>20 September 7, 2021, opinion used this opinion in</p> <p>21 interpreting the provisions of RSA 354-A:29 to</p> <p>22 34?</p> <p>23 A Could you clarify relative to what?</p>	<p style="text-align: right;">95</p> <p>1 the language again that Plaintiffs' counsel has</p> <p>2 highlighted in this document. Director Malachi</p> <p>3 explained -- strike that.</p> <p>4 I want to direct your attention to the</p> <p>5 language that's been highlighted by Plaintiffs'</p> <p>6 counsel, "Assistant Director Burke Cohen and</p> <p>7 Director Malachi explained that the likely</p> <p>8 inspiration was that there have been instances</p> <p>9 in which information has been presented in</p> <p>10 trainings and K - 12 classrooms that states</p> <p>11 directly and/or impliedly that inherent traits</p> <p>12 establish a person's inferiority/superiority."</p> <p>13 Do you see that language?</p> <p>14 A Yes.</p> <p>15 Q Is that an accurate reflection of what was said</p> <p>16 during the October 7, 2021, meeting of the Human</p> <p>17 Rights Commissioners?</p> <p>18 A I don't have a recollection.</p> <p>19 Q Okay. Any reason to think that that isn't an</p> <p>20 accurate reflection of what was said at the</p> <p>21 meeting?</p> <p>22 A No.</p> <p>23 Q Sitting here today, do you continue to believe</p>
<p style="text-align: right;">94</p> <p>1 Q Relative to any allegation of discrimination</p> <p>2 that has been received by the Commission under</p> <p>3 the challenged law in this case.</p> <p>4 A No.</p> <p>5 Q I'm going to set that aside. I'm going to have</p> <p>6 one more exhibit.</p> <p>7 (Exhibit 56 marked for identification)</p> <p>8 Q So Director Malachi, just as you read this, I'm</p> <p>9 only going to have you look at one particular</p> <p>10 paragraph, and that's the paragraph on the</p> <p>11 bottom of page 2 of Exhibit 56 that's Bates</p> <p>12 stamped HRC 00392, and that has been</p> <p>13 highlighted, and I will submit that that</p> <p>14 highlighting has been done by Plaintiffs'</p> <p>15 counsel in this case.</p> <p>16 So I think just to kind of streamline this</p> <p>17 process I think what I would just ask you to do</p> <p>18 is read that entire paragraph beginning with</p> <p>19 "Director Malachi discussed the impact of HB 2,"</p> <p>20 and when you finish that paragraph on page 2,</p> <p>21 just let me know when you're done, please.</p> <p>22 A Okay.</p> <p>23 Q So I'm going to just direct your attention to</p>	<p style="text-align: right;">96</p> <p>1 that the likely inspiration for HB 2 was that</p> <p>2 there been instances in which information has</p> <p>3 been presented in trainings in K through 12</p> <p>4 classrooms that states directly and/or impliedly</p> <p>5 that inherent traits establish a person's</p> <p>6 inferiority or superiority?</p> <p>7 A I'm sorry. Ask the first part of the question</p> <p>8 again?</p> <p>9 Q Sure. I know that you have no reason to believe</p> <p>10 this was an inaccurate reflection of what you</p> <p>11 said at the meeting. My question to you is that</p> <p>12 is this still your present understanding that</p> <p>13 the likely inspiration by the supporters of the</p> <p>14 challenged law, quote, "was that there have been</p> <p>15 instances in which information has been</p> <p>16 presented in trainings in K through 12</p> <p>17 classrooms that states directly and/or impliedly</p> <p>18 that inherent traits establish a person's</p> <p>19 inferiority/superiority?</p> <p>20 A I'm not having an opinion one way or the other.</p> <p>21 Q I just want to short-circuit this. All I'm</p> <p>22 asking for is you had an opinion at the time as</p> <p>23 to what the likely inspiration was for HB 2. So</p>

<p style="text-align: right;">97</p> <p>1 my question is sitting here today, does the</p> <p>2 opinion on page 2 that you had on October 7th,</p> <p>3 2021, continue to be your opinion sitting here</p> <p>4 today. That's all.</p> <p>5 MR. KENISON-MARVIN: Objection to the</p> <p>6 extent it mischaracterizes and misstates prior</p> <p>7 testimony.</p> <p>8 A Sitting here today I haven't given much thought</p> <p>9 to this statement two years ago.</p> <p>10 Q But you had an opinion obviously on October 7,</p> <p>11 2021, correct?</p> <p>12 MR. KENISON-MARVIN: Objection.</p> <p>13 Misrepresents prior testimony.</p> <p>14 Q Are you able to answer that question?</p> <p>15 A Oh, if I had an opinion?</p> <p>16 Q Then.</p> <p>17 A Then?</p> <p>18 Q Yes.</p> <p>19 A This is part of a discussion so I'm reading</p> <p>20 what's written here.</p> <p>21 Q I understand that. It seems to me based on the</p> <p>22 minutes that this is a summary of at least an</p> <p>23 explanation provided by Assistant Director Burke</p>	<p style="text-align: right;">99</p> <p>1 2, HRC-00392?</p> <p>2 A I do not.</p> <p>3 Q I'm going to also introduce another exhibit.</p> <p>4 (Exhibit 57 marked for identification)</p> <p>5 MR. BISSONNETTE: And I am also going to,</p> <p>6 if it's okay, Nate, I'm going to have before the</p> <p>7 witness the exhibit previously marked Exhibit 32</p> <p>8 as well. I'm just going to use these in</p> <p>9 conjunction with each other. Thank you.</p> <p>10 (Discussion off the record)</p> <p>11 Q Director Malachi, Exhibit 57 are Christian Kim's</p> <p>12 and your objections and responses to the</p> <p>13 Plaintiff's First Set of Interrogatories,</p> <p>14 correct?</p> <p>15 A You said 57?</p> <p>16 Q There should be two exhibits in front of you.</p> <p>17 The first is 57.</p> <p>18 MR. KENISON-MARVIN: Just clarify the title</p> <p>19 of the document versus caption.</p> <p>20 Q So I'll strike my last question.</p> <p>21 I want to just to confirm that in this case</p> <p>22 in which Commissioner Edelblut and other state</p> <p>23 actors are Defendants, can you confirm that</p>
<p style="text-align: right;">98</p> <p>1 Cohen and Director Malachi which is you. So I</p> <p>2 guess what I'm trying to get at is you had this,</p> <p>3 this is an explanation -- strike that.</p> <p>4 Do you know what is being referenced when</p> <p>5 the language states in this explanation that,</p> <p>6 quote, "there have been instances in which</p> <p>7 information has been presented in trainings in K</p> <p>8 through 12 classrooms that states directly</p> <p>9 and/or impliedly that inherent traits establish</p> <p>10 a person's inferiority/superiority?</p> <p>11 A I'm sorry. Are you asking if I have --</p> <p>12 Q What were the instances being referred to.</p> <p>13 That's what I'm trying to forget at.</p> <p>14 MR. KENISON-MARVIN: Objection.</p> <p>15 Foundation.</p> <p>16 A I don't have a recollection.</p> <p>17 Q So you don't know what was being referred to</p> <p>18 with respect to the specific instances that are</p> <p>19 on the bottom of page 2 HRC-00392?</p> <p>20 A I do not have a specific recollection.</p> <p>21 Q Do you have any recollection of this discussion</p> <p>22 that took place on October 7, 2021, that's</p> <p>23 referenced in the highlighted language on page</p>	<p style="text-align: right;">100</p> <p>1 Exhibit 57 consists of the Objection and</p> <p>2 Responses to the Plaintiff's First set of</p> <p>3 Interrogatories submitted to Chairperson</p> <p>4 Christian Kim and you, Executive Director Ahni</p> <p>5 Malachi?</p> <p>6 A I would have to look through this and speak with</p> <p>7 counsel to give you an answer to that question.</p> <p>8 Q Take as much time as you need. I do need you to</p> <p>9 confirm that.</p> <p>10 MR. KENISON-MARVIN: Off the record for</p> <p>11 just a second.</p> <p>12 (Director Malachi and Atty. Kenison-Marvin</p> <p>13 leave the room and return</p> <p>14 4:09 - 4:21 p.m.)</p> <p>15 Q If you could just reread the last question?</p> <p>16 (Requested portion read back by court reporter)</p> <p>17 A Okay. I'm very unclear in looking and this</p> <p>18 document which is noticed as Exhibit 57, these</p> <p>19 are questions for the Commissioner of Education.</p> <p>20 This is an Interrogatory for him specifically.</p> <p>21 So I can't answer or attest to anything for the</p> <p>22 Commissioner of Education. Am I looking at the</p> <p>23 wrong document?</p>

<p style="text-align: right;">101</p> <p>1 Q Are you referring to the caption that says Local</p> <p>2 8027 versus Frank Edelblut? Is that what you're</p> <p>3 referring to?</p> <p>4 A So I'm referring to Exhibit 57 that has that</p> <p>5 caption, and in looking through this document it</p> <p>6 talks about the Commissioner objecting and</p> <p>7 carries through on the Commissioner's</p> <p>8 objections, and it states the Human Rights</p> <p>9 Commission in some of the objections as part of</p> <p>10 Commissioner's answer.</p> <p>11 MR. KENISON-MARVIN: I do have a different</p> <p>12 document than her, I think.</p> <p>13 A It is not for the Human Rights Commission if you</p> <p>14 look at the signatures. Verification pages.</p> <p>15 Q So you have the wrong document? That's my</p> <p>16 fault.</p> <p>17 MR. KENISON-MARVIN: I can just look at</p> <p>18 everything, but yeah, it's captioned the</p> <p>19 Commissioner Frank Edelblut.</p> <p>20 (Exhibit 58 marked for identification)</p> <p>21 MR. BISSONNETTE: Thank you for flagging</p> <p>22 that, and I apologize. So that's on me. Thank</p> <p>23 you.</p>	<p style="text-align: right;">103</p> <p>1 can confirm that the HRC has docketed one</p> <p>2 complaint made under the amendments," end quote.</p> <p>3 Do you see that sentence?</p> <p>4 A Where are you on the page?</p> <p>5 Q Sure. I'm on page 10.</p> <p>6 A Yes.</p> <p>7 Q Above paragraph 7, the statement, quote, "The</p> <p>8 HRC Defendants can confirm that the HRC has</p> <p>9 docketed one complaint made under the</p> <p>10 amendments."</p> <p>11 A I see that.</p> <p>12 Q Sure. I've also put before you a document</p> <p>13 that's been previously marked as Exhibit 32. Do</p> <p>14 you see, I'm not asking you to read it yet but</p> <p>15 do you see is Exhibit 32 in front of you?</p> <p>16 A Yes.</p> <p>17 Q So my question is and you can take time to</p> <p>18 answer this, is Exhibit 32 the docketed</p> <p>19 complaint referenced on page 10 of your</p> <p>20 Interrogatory responses in Exhibit 58? And if</p> <p>21 we need a minute to go off the record I'm happy</p> <p>22 to do so as well.</p> <p>23 A So Exhibit 32 is not a docketed response or not</p>
<p style="text-align: right;">102</p> <p>1 Q So while you're reviewing that, Director</p> <p>2 Malachi, I'll have the same question with the</p> <p>3 caveat now is whether Exhibit 58 consists of</p> <p>4 Chairperson Christian Kim's and your objections</p> <p>5 and responses to the Plaintiffs' First Set of</p> <p>6 Interrogatories in this case.</p> <p>7 A Okay. For the 13th time, your question again?</p> <p>8 (Discussion off the record)</p> <p>9 Q Is Exhibit 58 the Interrogatory Responses of</p> <p>10 both Chairman Kim and you in response to the</p> <p>11 Plaintiffs' First Set of Interrogatories in this</p> <p>12 case?</p> <p>13 A That is a fair assessment.</p> <p>14 Q Okay. And you reviewed these responses before</p> <p>15 they were submitted to Plaintiffs' counsel in</p> <p>16 this case, I assume?</p> <p>17 A That's fair.</p> <p>18 Q And you signed a verification on page 15 of</p> <p>19 Exhibit 58, correct?</p> <p>20 A That would be my electronic signature.</p> <p>21 Q I'm only going to direct your attention to page</p> <p>22 10 and the response to Interrogatory number 6.</p> <p>23 There's a statement, quote, "The HRC Defendants</p>	<p style="text-align: right;">104</p> <p>1 a docketed charge.</p> <p>2 Q Okay. What is that sentence on page 2, what is</p> <p>3 the complaint that it is referencing</p> <p>4 specifically?</p> <p>5 A Which document are you on?</p> <p>6 Q I'm on Exhibit 58.</p> <p>7 A Okay.</p> <p>8 Q Quote, "The HRC Defendants can confirm that the</p> <p>9 HRC has docketed one complaint made under the</p> <p>10 amendments," end quote. Do you see that</p> <p>11 language?</p> <p>12 A I do.</p> <p>13 Q What is the Commission referring to in that</p> <p>14 statement?</p> <p>15 A It's referring to a docketed charge, a docketed,</p> <p>16 so it's an allegation and then it becomes,</p> <p>17 potentially becomes docketed and so it is</p> <p>18 referring to a docketed charge.</p> <p>19 Q Okay. And was that docketed charge produced in</p> <p>20 this litigation, do you know?</p> <p>21 A I would need to confer with my attorney because</p> <p>22 once we take a charge, well, anything, so</p> <p>23 conversations, questionnaires, charges are all</p>

<p style="text-align: right;">105</p> <p>1 confidential.</p> <p>2 Q Um-hum. Okay. Is the complaint in Exhibit 32,</p> <p>3 talking about the contents of the complaint, let</p> <p>4 me start again.</p> <p>5 Is the contents of the complaint from</p> <p>6 Mr. [REDACTED] in Exhibit 32 the same contents of</p> <p>7 the complaint that was docketed and that is</p> <p>8 reflected on page 10 of Exhibit 58?</p> <p>9 A I may need to confer with my attorney. I'm</p> <p>10 unsure of what I can share based on</p> <p>11 confidentiality of the Commission.</p> <p>12 MR. KENISON-MARVIN: I'm happy to do this</p> <p>13 just off the record quickly.</p> <p>14 (Discussion off the record)</p> <p>15 (Requested portion read back by court reporter).</p> <p>16 A So I need clarification. Are you asking if</p> <p>17 Mr. [REDACTED] completed one of our forms? Are</p> <p>18 you asking if just this information is a charge?</p> <p>19 I'm not clear on what you're asking.</p> <p>20 Q I'm a little bit at a disadvantage because I</p> <p>21 only have what the Commission produced to us in</p> <p>22 litigation. The only documents with respect to</p> <p>23 Mr. [REDACTED]'s complaint that have been produced</p>	<p style="text-align: right;">107</p> <p>1 official documents with the commission. So it</p> <p>2 has to be on that form which is signed by the</p> <p>3 Complainant and verified by a notary. So I'm</p> <p>4 not sure if that answers your question.</p> <p>5 Q It's difficult for me because all I have with</p> <p>6 respect to Mr. [REDACTED]'s allegation is what's</p> <p>7 reflected in Exhibit 32. I don't have anything</p> <p>8 else produced with respect to that allegation,</p> <p>9 but there's been an indication made to me that</p> <p>10 this is a docketed complaint. There's been a</p> <p>11 statement under oath from the Human Rights</p> <p>12 Commission that there's one docketed complaint</p> <p>13 under the amendments, and I'm trying to get at</p> <p>14 what that docketed complaint is. What are its</p> <p>15 contents.</p> <p>16 So that's going to be my question to you.</p> <p>17 I'm referring you back, Director Malachi, to the</p> <p>18 statement, quote, "The HRC Defendants can</p> <p>19 confirm the HRC has docketed one complaint made</p> <p>20 under the amendments," end quote. What is the</p> <p>21 substance of that complaint that has been</p> <p>22 docketed?</p> <p>23 A So the substance of the docketed complaint would</p>
<p style="text-align: right;">106</p> <p>1 in this litigation is what's reflected in</p> <p>2 Exhibit 32. That's all we've received. In</p> <p>3 addition, there's been a representation made to</p> <p>4 us by counsel that this complaint has been</p> <p>5 docketed.</p> <p>6 So all I'm just trying to get at is are the</p> <p>7 contents of Mr. [REDACTED]'s complaint in his</p> <p>8 email in Exhibit 32 the contents of the</p> <p>9 complaint that has been docketed by the HRC as</p> <p>10 reflected on page 10 of Exhibit 58?</p> <p>11 A Okay. So the answer to the question is a</p> <p>12 docketed charge is on a specific form with the</p> <p>13 Commission. That form is then verified. Any</p> <p>14 additional information that a complainant wishes</p> <p>15 to add to that, whatever that is, at the time of</p> <p>16 filing the charge they are welcome to do that.</p> <p>17 They are not required to do that. All that is</p> <p>18 required is their sworn affidavit that the</p> <p>19 events that they are discussing or the events</p> <p>20 that they are alleging have happened and then</p> <p>21 that form is verified. So their signature and</p> <p>22 then their signature is witnessed by a notary.</p> <p>23 So all charges, regardless of type, are on</p>	<p style="text-align: right;">108</p> <p>1 be whatever the individual is alleging took</p> <p>2 place, that information is put on a specific</p> <p>3 form that they would then sign and that</p> <p>4 signature is verified and that becomes the</p> <p>5 docketed complaint.</p> <p>6 Q So I haven't received that form. So I guess my</p> <p>7 question is can you sitting here today, can you</p> <p>8 recall what the allegation was in the form that</p> <p>9 was docketed and led to a docketed complaint</p> <p>10 made under the amendments? What was the</p> <p>11 complaint about? That's all I'm trying to get</p> <p>12 at.</p> <p>13 A To my recollection -- I'll stay that. Question</p> <p>14 again, please?</p> <p>15 (Requested portion read back by court reporter)</p> <p>16 A Without having the exact complaint document in</p> <p>17 front of me, I cannot tell you with a hundred</p> <p>18 percent certainty what is in the complaint.</p> <p>19 However, it would allude to something that is in</p> <p>20 this email to the Commission, but I don't have</p> <p>21 the exact language in front of me.</p> <p>22 Q Can we go off the record? Can I just speak with</p> <p>23 you?</p>

<p style="text-align: right;">109</p> <p>1 (Counsel leave the conference</p> <p>2 room and return 4:43 - 4:49 p.m.)</p> <p>3 MR. BISSONNETTE: After conferring with</p> <p>4 counsel, we are going to suspend this deposition</p> <p>5 and reconvene at a later time to cover just a</p> <p>6 few of the outstanding issue areas, and I</p> <p>7 believe there's agreement between counsel on</p> <p>8 that.</p> <p>9 MR. KENISON-MARVIN: Yes. Before we go off</p> <p>10 the record, I'll put on the record officially</p> <p>11 that we will be reserving the right to read and</p> <p>12 sign once everything is concluded.</p> <p>13 (Deposition suspended at 4:49 p.m.)</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p>	<p style="text-align: right;">111</p> <p style="text-align: center;">C E R T I F I C A T E</p> <p>1 I, Cynthia Foster, Registered Professional</p> <p>2 Reporter and Licensed Court Reporter, duly authorized</p> <p>3 to practice Shorthand Court Reporting in the State of</p> <p>4 New Hampshire, hereby certify that the foregoing</p> <p>5 pages, numbered 5 through 109, are a true and</p> <p>6 accurate transcription of my stenographic notes of</p> <p>7 the deposition of AHNI MALACHI who was first duly</p> <p>8 sworn by me on May 24, 2023, for use in the matter</p> <p>9 indicated on the title sheet, as to which a</p> <p>10 transcript was duly ordered;</p> <p>11</p> <p>12 I further certify that I am neither</p> <p>13 attorney nor counsel for, nor related to or employed</p> <p>14 by any of the parties to the action in which this</p> <p>15 transcript was produced, and further that I am not a</p> <p>16 relative or employee of any attorney or counsel</p> <p>17 employed in this case, nor am I financially</p> <p>18 interested in this action.</p> <p>19</p> <p>20</p> <p>21  Cynthia Foster, LCR</p> <p>22</p> <p>23</p>
<p style="text-align: right;">110</p> <p>1 I have carefully read the foregoing</p> <p>2 deposition, and the answers made by me are true.</p> <p>3</p> <p>4</p> <p>5 _____</p> <p>6 AHNI MALACHI</p> <p>7</p> <p>8 STATE OF _____</p> <p>9 _____, SS.</p> <p>10</p> <p>11 At _____ on the</p> <p>12 _____ day of _____ A.D.</p> <p>13 2023, personally appeared the above-named AHNI</p> <p>14 MALACHI and made oath that the foregoing answers</p> <p>15 subscribed by her are true.</p> <p>16 Before me,</p> <p>17</p> <p>18</p> <p>19</p> <p>20 _____</p> <p>21 Notary Public</p> <p>22</p> <p>23</p>	<p style="text-align: right;">112</p> <p style="text-align: center;">E R R A T A</p> <p>1 I, the undersigned, AHNI MALACHI, have read the</p> <p>2 transcript of my deposition held on May 24, 2023, in</p> <p>3 the matter of Local 8027, AFT-New Hampshire, et al v.</p> <p>4 Frank Edelblut, Commissioner, et al; and the same is</p> <p>5 true and correct, to the best of my knowledge, with</p> <p>6 the exception of the following changes noted below,</p> <p>7 if any:</p> <p>8 PAGE/LINE CORRECTION AND REASON FOR CORRECTION</p> <p>9 _____</p> <p>10 _____</p> <p>11 See attached sheet(s) for additional information:</p> <p>12 ___Yes___No</p> <p>13</p> <p>14 _____</p> <p>15 AHNI MALACHI</p> <p>16</p> <p>17 STATE OF _____)</p> <p>18) ss.:</p> <p>19 COUNTY OF _____)</p> <p>20</p> <p>21 Subscribed and sworn to before me this _____ day</p> <p>22 of _____, 2023.</p> <p>23</p> <p>24 _____</p> <p>25 Notary Public</p> <p>26</p> <p>27 My commission expires:</p> <p>28 _____</p> <p>29</p> <p>30</p> <p>31</p> <p>32</p> <p>33</p>

1 I have carefully read the foregoing
2 deposition, and the answers made by me are
3 true.¹

4 
5 AHNI MALACHI

6
7
8 STATE OF New Hampshire
9 Merrimack, SS.

10
11 At Merrimack County on the
12 17th day of July A.D.
13 2023, personally appeared the above-named AHNI
14 MALACHI and made oath that the foregoing answers
15 subscribed by her are true.

16 Before me,

17
18
19 
20 Notary Public
21
22

23 ¹ Subject to the changes indicated on the accompanying errata and
attachment thereto.

E R R A T A

I, the undersigned, AHNI MALACHI, have read the transcript of my deposition held on May 24, 2023, in the matter of Local 8027, AFT-New Hampshire, et al v. Frank Edelblut, Commissioner, et al; and the same is true and correct, to the best of my knowledge, with the exception of the following changes noted below, if any:

PAGE/LINE CORRECTION AND REASON FOR CORRECTION

P23 / L7 See attachment

P27 / L4 See attachment

See attached sheet(s) for additional information:

X Yes No

Ahni Malachi
AHNI MALACHI

STATE OF New Hampshire)
COUNTY OF Merrimack) SS.:

Subscribed and sworn to before me this 17th day
of July, 2023.

[Signature]
Notary Public

My commission expires:

Kelly A. Mederos, Esq Notary Public, State of New Hampshire My Commission Expires December 21, 2027

Local 8027, AFT-New Hampshire, et al., Plaintiffs vs. Frank Edelblut, Commissioner, et al., Defendants (D.N.H. Case No. 1:21-cv-01077-PB)

Ahni Malachi

ERRATA SHEET

ATTACHMENT

Page 23, Line 7, Change:

Replace “Commissioner’s” with “Commission’s” such that the transcript states:

“As I sit here today reading this, it does appear to be an accurate reflection of the Commission’s process.”

Reason: Likely transcription error; otherwise, to clarify testimony.

Page 27, Line 4, Change:

Replace “bearing” with “meaning” such that the transcript states:

“The Commission language has meaning.”

Reason: Likely transcription error; otherwise, to clarify testimony.

[end]